United Nations A/HRC/39/55/Add.1

General Assembly

Distr.: General
6 July 2018

Original: English

Human Rights Council
Thirty-ninth session
10–28 September 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his mission to India

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, on his official visit to India from 27 October to 10 November 2017.

GE.18-11209(E)
1811209

Please recycle

Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his mission to India*

Contents

		Page
I.	Introduction	3
II.	Legal and policy framework	3
	A. Legal framework	3
	B. Institutional and policy framework	5
III.	Human rights to safe drinking water and sanitation	6
	A. Availability	6
	B. Accessibility	9
	C. Affordability	10
	D. Quality and safety	11
	E. Acceptability	12
	F. Sustainability	13
IV.	Leaving no one behind	14
	A. Scheduled castes	15
	B. Persons with disabilities	16
	C. Place of residence	16
	D. Undocumented population	17
V.	Recommendations	18

* Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council resolution 33/10, the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, undertook an official visit to India from 27 October to 10 November 2017, at the invitation of the Government.

2. During the two-week visit, the Special Rapporteur travelled to various parts of the country in order to have a broad understanding of the situation, speaking to the relevant government authorities and interacting with as many stakeholders as possible. He had the opportunity to meet with representatives of government and governmental entities at the Union, state and local levels.[1] He visited New Delhi; Lucknow, State of Uttar Pradesh; Mumbai, State of Maharashtra; Kolkata, State of West Bengal; and Imphal, State of Manipur. In those places, the Special Rapporteur had the opportunity to listen to and interview people whose enjoyment of the rights to water and sanitation has been affected. Additionally, he convened several civil society consultations at the regional level, where he engaged in discussions with a large number of civil society representatives and individuals.

3. The methodology used for the country visit was based on the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council and the terms of reference for country visits by the special procedures mandate holders. The analysis of the realization of the human rights to water and sanitation in India calls for a highly complex assessment, in the light of both the constant changes in the implementation of national programmes set up to address the gaps in access to water and sanitation services, and the large social, economic, political, demographic, cultural and regional diversities across the country. During the visit, the Special Rapporteur often faced diverging views about the current situation of the water and sanitation services when talking to the central Government, to local authorities or to civil society organizations. Hence, for his assessment, he aimed to adopt the most balanced approach possible, applying a human rights lens to the best evidence provided by a variety of sources.

4. The Special Rapporteur expresses his appreciation to the Government for its engagement before, during and after the visit. He thanks all those who took the time to meet with him and who generously shared their personal experiences and testimonies and described their living conditions. The Special Rapporteur also thanks the Office of the United Nations Resident Coordinator in India for facilitating the visit.

II. Legal and policy framework

A. Legal framework

5. The human rights to water and sanitation and the human rights obligations of the State are recognized in the International Covenant on Economic, Social and Cultural Rights, ratified by India in 1979, and several other international human rights treaties.[2] The human rights to water and sanitation derive from the right to an adequate standard of living, protected under, inter alia, article 25 of the Universal Declaration of Human Rights, and article 11 of the Covenant. Furthermore, the General Assembly and the Human Rights

[1] Ministry of External Affairs, Ministry of Finance, Ministry of Drinking Water and Sanitation, Ministry of Rural Development, Ministry of Housing and Urban Affairs, Ministry of Health and Family Welfare, Ministry of Railways, National Institute for Transforming India, National Human Rights Commission, National Commission for Women, National Commission for Scheduled Castes, National Commission for Safai Karamcharis, Delhi Jal Board, government of Uttar Pradesh, government of Maharashtra, government of Manipur, Municipal Corporation of Greater Mumbai, Imphal Municipal Corporation.

[2] See article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, ratified by India in 1993; articles 24 and 27 (3) of the Convention on the Rights of the Child, acceded to by India in 1992; and article 28 of the Convention on the Rights of Persons with Disabilities, ratified by India in 2007.

Council have explicitly recognized, in resolutions, the rights to water and sanitation as two distinct but interrelated human rights. The support of India for the resolutions reflects the State's international commitment to and recognition of the human rights to water and sanitation.[3]

6. The international obligations of India stipulated under the international human rights treaties to which it is a party are implemented through national legislation passed by Parliament (article 253 of the Constitution). In other words, unless incorporated into national law by the legislature, the international treaties that India has ratified do not automatically become part of the national legal system. In accordance with article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, States parties are required to utilize all appropriate means, including particularly the adoption of legislative measures, in the implementation of their Covenant obligations. However, India has yet to enact a national law recognizing water and sanitation as human rights.

7. The judiciary in India has played an active role in developing a practice of interpreting the domestic law on the basis of international human rights law. While the Constitution does not explicitly mention the human rights to water and sanitation, its article 21, on the right to life, has been progressively interpreted by the courts to include the rights to water and sanitation. As early as the 1990s, the judiciary had formally recognized the right to water as a right derived from the right to life. The legal foundation of this basic right is found in case law, established by the courts, related to environmental pollution and, more recently, to water supply that is inadequate or completely lacking. The Supreme Court of India also addressed issues of sanitation within the broad interpretation of the right to life under article 21 of the Constitution.[4]

8. While there has been substantial support of the human rights to water and sanitation through legal jurisprudence in India, further support is warranted in the form of binding legislation or regulation and legal enforcement mechanisms, which will complement the existing legislation on groundwater in some states. Instead of a national law being implemented, model bills and framework legislation have been used as guidance for states to adopt and enact their own legislation. The Special Rapporteur heard concerns that the lack of harmonized legislation had led to a patchwork of legislation on water and sanitation varying by state, with few states adopting the model bills as law. He emphasizes that the draft national water framework bill (2016) should recognize the human rights to water and sanitation in line with the authoritative interpretation, provided by the Committee on Economic, Social and Cultural Rights, the General Assembly and the Human Rights Council, of their scope and content.[5]

9. The Special Rapporteur wishes to underscore the importance of explicit legislative recognition of these rights and clear stipulation in legislation of the scope and contents of both rights. In a federal system, such as that of India, having a national law is a key to harmonized and consistent implementation of human rights standards throughout the country. It would ensure the justiciability of the human rights to water and sanitation, namely, individuals and groups who are alleged victims of violations of those rights would be able to file a complaint before a judicial body, to request legal remedies and to have those remedies enforced. In this regard, the Special Rapporteur recommends the Government to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

---

[3] In 2010, India voted in favour of General Assembly resolution 64/292 on the human right to water and sanitation. It also supported the adoption of Assembly resolution 70/169, in 2015, and Human Rights Council resolution 33/10, in 2015, in which, for the first time, water and sanitation were addressed as two distinct human rights.

[4] *Gaur and Others v. State of Haryana and Others*, judgment of 24 November 1994.

[5] See the Committee's general comment No. 15 (2002) on the right to water, General Assembly resolution 70/169 and Human Rights Council resolution 33/10 explicitly recognizing the right to sanitation.

B. Institutional and policy framework

10. India has a federal system. The powers of the central and state governments are constitutionally determined and are divided into three categories: Union, which covers central government responsibilities; state; and concurrent, which delineate shared responsibilities between both levels of government (see A/HRC/34/51/Add.1, para. 9). The Constitution introduced the system of municipalities in the urban areas and the system of Panchayati Raj (local assemblies of elected officials with decentralized responsibilities) in towns and villages in rural areas. Water and sanitation are state subjects, for which different states have set up different institutional arrangements, resulting in varied responsibility frameworks for service provision. For instance, in Imphal, State of Manipur, the state government is responsible for the urban area of Imphal city and the rural areas. Yet, in the State of Maharastra, the Municipal Corporation of Greater Mumbai is responsible for the urban area of Mumbai and the rural area is within the purview of the local governments in the state. Usually, panchayats and local bodies implement sanitation programmes in rural areas. In relation to the implementation and monitoring of water and sanitation policies and national budget allocation, the system by which responsibility is shared among central government entities is complex, with separate budget procedures for rural and urban areas.

11. As part of the State, local governments themselves — both those in the Panchayati Raj system and municipalities — are bound by international human rights law. Thus, minimum standards based on human rights criteria must be set at the national level in order to ensure legal clarity, coherence and countrywide compliance with human rights. The national and local governments have the obligation to regulate both formal and informal service provision (see A/HRC/36/45, paras. 69–77) to ensure service providers' accountability for non-compliance with the human rights to water and sanitation.

12. At the policy level, the Government is in the process of implementing several national programmes aimed at improving access to drinking water and sanitation. The National Rural Drinking Water Programme was launched in April 2009 to assist states in providing drinking water to the rural population. The objective of the National Water Policy is to take cognizance of the existing situation, in order to propose a framework for the creation of a system of laws and institutions and for a plan of action with a unified national perspective. The Programme has incorporated changes to the previous programme, emphasizing water supply systems that are planned and managed by the community at the village level, and is aimed at ensuring the availability of sustainable drinking water, convenient supply systems and water security at the household level.

13. The most frequently discussed topic during the Special Rapporteur's interactions with the Government and civil society was related to the Swachh Bharat Mission (Clean India Mission). In his end-of-mission press statement, the Special Rapporteur referred to the programme as a unique effort of a country to face its challenges related to sanitation in an extremely short time span, and as a large step towards the progressive realization of the Indian population's human right to sanitation.[6] The Special Rapporteur warmly commends the Government for the implementation of this relevant initiative; in particular he commends the Prime Minister for his personal engagement. During the visit, the Special Rapporteur was impressed by the nationwide momentum, from the central Government to the most basic unit of administration and the general public, to eliminate open defecation, to accelerate the efforts to achieve universal sanitation coverage and to focus on sanitation. The main goal of the programme is to end open defecation by October 2019 through the mass installation of millions of toilets across the country, supported by the allocation of an impressive budget.

14. The new paradigm initiated under the Clean India Mission has provided considerable impetus to build infrastructure, particularly toilets, including through provision of 12,000 Indian rupees (approximately $185) directly to beneficiaries by various modes of disbursement, typically in two instalments. At the time of the visit in November 2017, the website of the Clean India Mission (www.swachhsangraha.gov.in) a striking

[6] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22375.

number indicated that in rural areas alone 53 million toilets had been built in the previous three years and one month. As at May 2018, another 4.9 million household toilets and 300,000 public toilets had been constructed in urban areas. The Special Rapporteur had the opportunity to visit some rural communities in Uttar Pradesh, certified as open defecation free, and was able to see and hear about the significant improvements in their sanitary conditions.

15. The programme is currently running in 36 states and Union Territories. It is coordinated by the Ministry of Drinking Water and Sanitation, which is responsible for the rural component of the Clean India Mission; the urban component is under the purview of the Ministry of Housing and Urban Affairs. On several occasions, the distinction made between rural and urban India was emphasized to the Special Rapporteur from the perspective of the administrative division of responsibility between the two ministries and the political-administrative organization of the country.

16. Despite the progress made under the programme outlined above, the Special Rapporteur expresses particular concern about the possible gaps between the formulation of the Clean India Mission and the way the programme has been implemented, which could affect some elements of the fundamental human rights. The Clean India Mission is heavily target- and performance-oriented, with a time frame that is very short given the scale of its projected outcomes. Implementation involves intense competition at all levels (villages, districts and states). However, likely as an unintended consequence of the desire to obtain rewards, including the title of "open defecation free", some aggressive and abusive practices seem to have emerged. The Special Rapporteur heard several testimonies that, in the interest of achieving the targets and obtaining the corresponding rewards, people were coerced to, on the one hand, construct toilets quickly and, on the other, stop practising open defecation. For instance, when individuals are identified as practitioners of open defecation, they could have their ration card revoked, which directly affects their exercise of the right to food. Households with overdue energy bills, hitherto tolerated by the authorities, could have the services disconnected. In other cases, individuals defecating in the open are being shamed, harassed, attacked or otherwise penalized. In response to such cases, the Ministry of Drinking Water and Sanitation recognized the existence of abuse associated with the Clean India Mission implementation and issued at least two advisories to all states underlining that such practices must stop. In the view of the Special Rapporteur, those unacceptable practices require continuous monitoring, and all tiers of government must be accountable for upholding the dignity of all persons and not violating other fundamental rights.

III. Human rights to safe drinking water and sanitation

A. Availability

17. While India achieved the target of the Millennium Development Goals on sustainable access to safe drinking water, the Special Rapporteur highlights that the way in which Indian people currently access water services falls far short of meeting the requirements established for target 6.1 of the Sustainable Development Goals, namely, the standard of "safely managed services". Under this standard, water should be available when needed, free from contamination and accessible on premises. For the availability criteria to be met, water in urban and rural areas would need to be provided on a continuous basis, fulfilling the needs of children and adults, including the elderly. The same standard of "safely managed services" is to be applied under target 6.2, meaning that people should be using improved sanitation facilities not shared with other households. To achieve this standard, individual household facilities must be provided to those who currently rely on community toilets. This also entails the provision of sanitation facilities in public spaces, schools, health centres and detention centres.

18. In a press release dated 10 November 2017, the Government presented statistics illustrating its understanding of the availability of water and sanitation in India: "Over 25 crore [250 million] people have got sanitation facilities in three years. Over 2.7 lakh

[270,000] villages, 227 ... districts and 6 ... states are open defecation free (ODF). Seventy-seven per cent of the habitations in rural areas have access to at least 40 Litres Per Capita per Day (LPCD) of water supply. More than 90 per cent people in urban areas have access to safe drinking water".[7] The Government informed the Special Rapporteur that, as at May 2018, the number of sanitation facilities had increased to 35 crore (350 million) and that over 3.6 lakh (360,000) villages, 385 districts, 13 states and 4 Union Territories were open defecation free.

19. Availability of water means that the water supply for each person must be sufficient and continuous for the purposes of drinking, personal sanitation, washing clothes, food preparation and personal and household hygiene. In this context, "each person" refers not only to the 77 per cent of the population in the rural area or 92 per cent in the urban area who have access to water, but also to those who do not (see sect. IV below). It is well known that a normative definition of per capita consumption does not reflect the reality of supply, which varies greatly depending on the nature of the water source and its variations throughout the seasons, the delivery system and the position of a household in a piped system. Thus, the defined minimum consumption of 40 litres per capita per day certainly does not occur homogeneously in practice as such; consumption should be reliably and comprehensively monitored in order to ensure that the entire population of India receives water in line with the human rights standard.

20. With respect to the availability of sanitation, there must be a sufficient number of facilities to avoid overcrowding and waiting times, and the continuous availability of toilets needs to be ensured. When public toilets close after certain hours in the evening, people are forced to defecate in the open at night, which particularly affects women and girls. According to the WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation, in 2015 about 524 million people in India (40 per cent of the population) had to defecate in the open. India accounted for more than 90 per cent of the people in Central and South Asia and 59 per cent of the 892 million people in the world who practised open defecation in 2015. However, the position of the Government is that the Joint Monitoring Programme "incorrectly projects the number of people defecating in [the] open from a trend line based on sanitation data available in the preceding years" and that the number of people practising open defecation had been reduced to 200 million.[8] As at May 2018, 360,832 villages, 159,567 gran panchayats, 3,494 blocks, 384 districts and 17 states had been declared open defecation free. Out of a total of 4,041 cities, 2,711 had been declared open defecation free.[9]

21. While the figures reported by the Government relating to the progress of the Clean India Mission are impressive and the achievements are highly commendable, the Special Rapporteur wishes to emphasize the need to ensure that this availability is leading to actual usage by individuals. Moreover, efforts focused on rigorous measures to count the number of toilets and the number of administrative units that are open defecation free must be combined with efforts to monitor populations that do not have access to sanitation facilities. The Special Rapporteur emphasizes that the assessment of sanitation requirements should be contextual and consider the characteristics of particular groups that may have different sanitation needs. In particular, access to sanitation facilities should be guaranteed for all without discrimination in practice.

22. Certifying a village as open defecation free may be a positive incentive policy, but the process should be developed and implemented to ensure that the focus on the realization of the right to sanitation does not shift to become a mere counting exercise. Although "open defecation free", as a concept, is the same in rural and urban areas in spirit, according to the responsible ministries the protocol to certify an area as open defecation free is not the same for rural and urban areas. The Special Rapporteur learned that some areas certified as open defecation free are often not de facto open defecation free. In one village certified as open

[7] Government of India, press release (10 November 2017). Available from http://pibmumbai.gov.in/scripts/detail.asp?releaseId=E2017PR2060.

[8] Submission from the Government of India dated 15 June 2018.

[9] Ibid.

defecation free, which the Special Rapporteur visited, some elderly people reported that they continued to practise open defecation, citing personal preference and comfort as reasons. In Mumbai, the local authority identified 118 zones that were used for open defecation and built collective toilets within 500 metres of those areas. Yet some residents in those zones still choose to defecate in the open for habitual, cultural and practical reasons. From the human rights perspective, making an area open defecation free is more than checking off the criteria; the status of open defecation free is not clear-cut, but entails gradual achievement in line with the progressive realization of the human right to sanitation.

23. Access to water and sanitation in public spaces must be guaranteed by the Government in line with its obligation to realize the human rights to safe drinking water and sanitation. During the visit, the Special Rapporteur received several reports and observed in many cases that public places, including schools, transport hubs and police stations lacked sufficient and adequate facilities for water and toilets. There has been a large emphasis on having gas stations make their toilets accessible to the public, but often those facilities are locked or unusable. The number of community toilets available is often small in relation to the number of families that require those facilities. This inevitably affects the large population that is "on the move" daily, which includes homeless persons, street vendors, rickshaw drivers and seasonal migrant workers. Street vendors are particularly dependent on the sanitation facilities located in buildings nearby and are often forced to provide money to the guards of the building in exchange for access to those facilities. Moreover, according to interviews conducted by the Special Rapporteur, public toilets are usually not accessible for persons with disabilities, are inadequate for transgender persons and lack adequate facilities for handwashing and for menstrual hygiene management.

24. Policy initiatives on ensuring access to water and sanitation in schools have been implemented but their goals have evidently still not been met. For example, in 2015, the ministry responsible for human resources announced that schools should have separate toilets for boys and girls. The Government reports having built separate toilets in every government school: 226,000 toilets for boys and 191,000 toilets for girls were constructed between August 2014 and August 2015 (see A/HRC/WG.6/27/IND/1, para. 98). Yet, in 2016, only 62 per cent of schools had girls' toilets that were available and useable.[10] In one school the Special Rapporteur visited in Sarthara village, near Lucknow, no functioning toilets were available for the 130 students; two small toilet facilities with two urinals and one toilet each were being built. The Special Rapporteur observed that the design of the toilets for both girls and boys were the same and that the particular needs of girls were not taken into consideration.

25. In relation to the lack of availability of appropriate facilities for collection and disposal of human excreta, discrimination against manual scavengers — those who manually clean latrines and sewers, carrying, disposing or handling human excreta — is a concern. During the visit, many people explained to the Special Rapporteur that manual scavenging was an occupation linked to social caste in India. Under The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, manual scavenging is officially banned. Furthermore, the Government has made efforts to identify and rehabilitate manual scavengers and direct them into different occupations. However, during the interaction with civil society, several surveys identifying the number of manual scavengers were presented to the Special Rapporteur. There are discrepancies among the numbers identified by the Government and those indicated in surveys by civil society, mostly due to differences in the definitions of manual scavenging. From a human rights perspective, whether manual cleaning takes place with or without protective gear — a distinction made in the definition included in the Act — is not relevant when ascertaining whether manual scavenging reflects caste-based discrimination. The reality, as described to the Special Rapporteur, is that those who work as manual scavengers do so because it is the only option open to them.

[10] See http://img.asercentre.org/docs/Publications/ASER%20Reports/ASER%202016/aser2016_nationalpressrelease.pdf.

26. During the visit, the Special Rapporteur met several people who indicated that they themselves, their relatives or their neighbours continued to be employed in manual scavenging. He met with a number of persons from various districts in Uttar Pradesh who are currently engaged in manual scavenging. The Special Rapporteur heard, during meetings in Delhi and Lucknow, from several people who spoke about a number of relatives who had died while carrying out the hard work of emptying latrines or cleaning sewer lines; they had received no adequate compensation from the State and had faced many difficulties in filing cases for compensation.

27. Efforts to step up the realization of the right to sanitation and end open defecation may unintendedly aggravate discrimination in practice. In particular, the growth in the number of toilets raises concerns that the generations-old practice of imposing sanitary tasks on the lower castes will continue in a discriminatory fashion.

28. It is questionable whether even facilities with the standard technology for excreta disposal applied in the Clean India Mission efforts — twin-pit latrines — will be properly used and whether manual scavenging as a discriminatory practice will be eliminated. In the operation of the twin-pit latrine, the first pit is filled with waste, the pit is switched, the first pit is not touched for at least one year, and after that period the waste can be removed safely. Current communication efforts will have to be extensive and continuous for many years in order for hundreds of millions of people to acquire and assimilate the knowledge of how the technology functions. Even if the twin-pit latrines are properly operated, safeguards would need to be in place to impede the reproduction of manual scavenging practices by scheduled castes. At the same time, the Government should monitor how other technologies are operated, since some studies have indicated that the number of single-pit latrines that have been constructed across several states is not negligible, representing even more unsafe work for manual scavengers.[11]

B. Accessibility

29. Physical accessibility of water implies that sufficient, safe and acceptable water must be within physical reach of everyone, that is, in the immediate vicinity of each household, educational institution and workplace. Where water supply is not available on premises, populations — most often women and children — spend precious time fetching water from surface water, boreholes, tube wells or, in some cases, public stand posts and water tankers.

30. According to the Government, the National Rural Drinking Water Programme "provides for drinking water within the household premises or at a distance of not more than 100 metres from their household".[12] Yet, several people reiterated to the Special Rapporteur that the opportunity cost associated with collecting water is high: it commonly affects children with regard to the time available to them to attend school, and women with regard to their right to equal opportunity. Women are also exposed to violence as a result of this burden; in the hilly districts of the State of Manipur, there have been reports of women being subjected to sexual violence when fetching water.

31. In 2015, it was reported that 92 per cent of the population had access to improved sources of water. When we use the stricter definition adopted under the Sustainable Development Goals, this proportion reduces dramatically: only 49 per cent of the rural population receive water meeting this standard. In the urban areas, 73 per cent of the population have water accessible on premises and 86 per cent have it available when needed.[13] No consolidated information for drinking water quality in Indian urban areas are available in the Sustainable Development Goals baseline report published by the Joint Monitoring Programme.

---

[11] WaterAid, "Quality and sustainability of toilets: a rapid assessment of technologies under Swachh Bharat Mission – Gramin" (2017).

[12] Government of India, press release (10 November 2017).

[13] World Health Organization (WHO) and United Nations Children's Fund (UNICEF), *Progress on Drinking Water, Sanitation and Hygiene: 2017 Update and SDG Baselines*.

32. In relation to access to sanitation, there are significant discrepancies across several surveys. Data from the Joint Monitoring Programme (2015) reveal that 44 per cent of the national population (65 per cent in urban areas and 34 per cent in rural areas) have access to at least basic services. According to the Government, as at May 2018, 84 per cent of rural India had access to improved latrine facilities (a figure 50 percentage points higher than that of the Joint Monitoring Programme), indicating that 16 per cent of the population is not covered. Access to sanitation must take into account not only physical access but also the number of people who use the toilet, the quality of the facilities, the proper management of faecal sludge and sewage and the safe transport and disposal of grey water.

33. From a human rights perspective, sanitation includes the treatment and disposal or reuse of excreta and wastewater. Such a broad understanding is warranted, as sanitation not only concerns one's own right to use a latrine or toilet, but also the human rights of other people, who can be negatively affected when wastes are not appropriately treated or disposed of (see A/68/264). This is reflected in the concept of "safely managed services", which also indicates the need for improved management of grey water, which commonly flows into open drains in India. To meet this standard, India would also need to implement an effective faecal sludge management system for excreta stored in latrines and achieve a massive increase in wastewater treatment for the population served by sewerage systems, mostly in cities. The Joint Monitoring Programme reported that the current treatment system covered only 9 per cent of the urban population in 2015.

34. The Government, citing the National Annual Rural Sanitation Survey 2017–18, an independent survey by a third party, stated that more than 70 per cent of villages had systems to manage solid and liquid waste. The waste management activities undertaken in the villages under the Clean India Mission, specifically the ODF-Plus initiative, include solid and liquid waste management and the management of grey water from kitchen and washing activities. The Atal Mission for Rejuvenation and Urban Transformation includes interventions relating to sewerage systems, wastewater treatment plants and faecal sludge management in cities. The Special Rapporteur reiterates the importance of adequate disposal and treatment of excreta, grey water and wastewater, as they present a major health hazard, especially in densely populated urban areas.

C. Affordability

35. Access to water and sanitation facilities must be affordable for all. This means that the direct and indirect costs incurred for those basic amenities must not limit people's capacity to pay for other services, which could ultimately hinder the realization of other rights under the International Covenant on Economic, Social and Cultural Rights. Furthermore, the Special Rapporteur considers that, in the context of targets 6.1. and 6.2 of the Sustainable Development Goals and their indicators, affordability should be treated as an integral part of the definition of "safely managed services".[14]

36. In general, access to water services provided by formal systems in India, including the piped systems in urban areas, is relatively affordable. However, the Special Rapporteur witnessed several situations where individual users were forced to rely on informal providers who sold water at a price that was much higher than that of formal provision. In a resettlement site in Delhi, residents who were not able to collect water from the Delhi Jal Board water tank had to rely on "water ATMs". This meant that they had to have adequate financial resources to ensure that they had water of acceptable quality. In Kolkata, informal vendors transported water obtained freely through public taps and charged slums dwellers for the delivery (20 Indian rupees for 20 litres of water). In the informal settlement of Kaula Bunder, Mumbai Port Trust, a highly complex and unsafe network that is illegally sourced from the municipal water network is operated by a so-called water mafia that charges the households 10 times more than what is paid by consumers living in the "legal city".

[14] See also, in this regard, an open letter from the Special Rapporteur addressed to the Joint Monitoring Programme. Available from www.ohchr.org/Documents/Issues/Water/OpenLetter_WHO_UNICEF_WASH.pdf.

Although municipal and state authorities deny its existence, the Special Rapporteur witnessed a web of water mains, referred to as "flying pipes", suspended in the air among the informal settlement's 7,000 dwellings, snaking across the ground and passing through immense heaps of waste. The Special Rapporteur reiterates the need to have proper regulation of both formal and informal service providers.

D. Quality and safety

37. The human rights framework requires that water be safe, namely, that it must be free from microorganisms, chemical substances and radiological hazards that constitute a threat to a persons' health. The Special Rapporteur notes the Government's "national sub-mission to end arsenic and fluoride contamination in rural water in 4 years".[15] The Ministry of Drinking Water and Sanitation provides support in setting up and strengthening water-testing laboratories at the district and subdivisional levels in the states. As at December 2016, 27 state-level, 729 district-level, 279 block-level, 1,117 subdivisional-level and 88 mobile testing laboratories had been set up by the states and Union Territories.[16] A set of detailed guidelines have also been issued by the Ministry, indicating activities to be undertaken to guarantee safe drinking water in districts particularly affected by Japanese Encephalitis and Acute Encephalitis, including sanitary inspection and disinfection of water sources.[17]

38. Relevant bodies at all levels of the government require appropriate processes to monitor and survey drinking water quality, and to properly remove chemical and microbiological contamination. Regular monitoring of groundwater is undertaken by the Central Ground Water Board of the ministry responsible for water resources and by the Water Quality Assessment Authority. Since the inception of the National Rural Drinking Water Programme, approximately 500,000 chemical kits and 11.9 million bacteriological vials have been purchased or supplied. Almost 4.5 million rural drinking water sources were tested using these kits and close to 3.5 million people have been trained in different states to carry out the water quality tests.[18]

39. However, despite these commendable measures, the Special Rapporteur notes that the quality of drinking water is still an ongoing matter of concern. In 2011, 130.6 million people in India lived in areas with water quality that was unsafe, not meeting the Bureau of Indian Standards only standard specifically for drinking water (IS 10500:2012).[19]

40. Surface water and groundwater are affected by severe pollution, including industrial effluents, sewage and excreta and pollution from waste dumping/leaching, landfills, underground gas tanks and the use of fertilizers and pesticides. Groundwater is often contaminated by chemical components such as arsenic, fluoride, nitrates, and iron and other heavy metals.

41. According to data from the Central Ground Water Board, levels of chemical components in groundwater higher than the limits established by the Bureau of Indian Standards have been observed: fluoride levels exceeded limits in 276 districts in 20 states and arsenic levels exceeded limits in 86 districts in 10 states. A total of 387 districts in 21 states and 297 districts in 24 states are contaminated with high levels of nitrate and iron, respectively.[20] Heavy metals, such as lead, chromium and cadmium, have also found their way into the groundwater, with 113 districts in 15 states contaminated with at least one heavy metal. According to the West Bengal Pollution Control Board, 38 per cent of the groundwater in West Bengal is contaminated with arsenic and fluoride. This has grave

[15] Government of India, press release (10 November 2017).

[16] Government of India, Ministry of Drinking Water and Sanitation, *Annual Report 2016–2017*.

[17] Ibid.

[18] Information provided by the Government on the National Rural Drinking Water Programme.

[19] Tien Shiao and others, "3 maps explain India's growing water risks" (World Resources Institute, 2017). Available from www.wri.org/blog/2015/02/3-maps-explain-india%E2%80%99s-growing-water-risks.

[20] Central Ground Water Board. See http://cgwb.gov.in/Documents/Contaminated%20Areas.pdf.

implications, as approximately 84 per cent of the rural population in the state depends on groundwater sources for drinking water.[21] The Special Rapporteur notes that, through the National Water Quality Sub-Mission, the Government aims to eliminate arsenic and fluoride contamination by 2021.

42. Although the central and state governments have been adopting different measures to control this chemical contamination, those measures have not been entirely effective, and the problem worryingly persists, causing serious health effects. For instance, the Special Rapporteur met a man living in Gobindapur village, near the Bangladesh border, who was suffering from chronic arsenicosis and who showed the effects of this disease on different parts of his skin. His brother had passed away due to arsenic contamination and his family members suffered similar negative health impacts.

43. Another key issue related to water quality is faecal contamination. The general state of surface water in the country reflects the conditions of access to adequate sanitation services and deficits in wastewater treatment, which pose severe threats to the microbiological quality of the water consumed. The Joint Monitoring Programme reported that more than one third of the water consumed by rural populations was contaminated in 2015. Other studies show doubtful microbiological drinking water quality in various parts of India.[22] Also of note is that many households do not treat water before consumption. The reduction of open defecation practices in recent years might change this picture, but the impact of the national programmes for sanitation and environmental protection on the improvement of drinking water quality still needs to be assessed.

44. Quality of water and sanitation is closely related to access to information by the public. India has a robust management information system and dashboards that, for instance, provide information on drinking water status in rural areas.[23] The Special Rapporteur notes that the presentation of that information is targeted at technical experts; efforts could be made to make the information accessible to the public at large.

45. Sanitation facilities must be hygienically safe to use, meaning that the infrastructure must effectively prevent human, animal and insect contact with human excreta; ensure access to safe water for hand washing and menstrual hygiene; be designed taking into account the needs of persons with disabilities and children; and be regularly cleaned and maintained. The Special Rapporteur observed that such facilities in India can be precarious in terms of quality and safety; there have been cases where, following a collapse of community toilet infrastructure, people queuing to use the toilets have fallen into the pits containing excreta and died.

E. Acceptability

46. Sanitation facilities and services must be culturally acceptable (see A/HRC/12/24, para. 80). While there are differing perspectives about which sanitation solutions are acceptable, cultural values must be taken into account regarding design, positioning and conditions for use.

47. After interacting with government officials, community representatives and residents, it became clear to the Special Rapporteur that open defecation is often an ingrained personal and social practice, and that it can be difficult to persuade people to end the practice and use specific types of toilets. In several states, challenges were reported in achieving behaviour change in their communities, particularly among the elderly. The large cultural and ethnic diversity in India is a consideration: the Special Rapporteur heard from

---

[21] Anamika Shrivastava and others, "Arsenic contamination in shallow groundwater and agricultural soil of Chakdaha block, West Bengal, India", *Frontiers in Environmental Science*, vol. 2 (November 2014).

[22] One systematic review of 60 studies on faecal contamination in India revealed only 6 in which all samples showed an absence of contamination. See Robert Bain and others, "Fecal contamination of drinking-water in low- and middle-income countries: a systematic review and meta-analysis", *PLOS Medicine* vol. 11, No. 5.

[23] See http://indiawater.gov.in/IMISReports/nrdwpmain.aspx.

community representatives and residents that the standard design adopted by the Clean India Mission — pour-flush twin-pit toilets — does not necessarily meet the needs, or fit with the culture, of all populations. At the same time, he met many individuals in villages who enthusiastically conveyed their satisfaction with the benefits that come with having an individual household toilet. However, many, including government officials, expressed doubts that behaviour change could be achieved in a short time period and that it would be sustainable in the long term by all those recently "converted" to using toilets.

48. Sanitation facilities must be acceptable for all individuals, including those who are transgender and gender non-conforming (see A/HRC/33/49, para. 9). In 2014, the Supreme Court of India affirmed the right of transgender persons to decide their self-identified gender, and directed the Government to take specific steps to ensure equality and non-discrimination for transgender persons, including steps to take proper measures to provide them with separate public toilets and other facilities.[24] Further, guidelines on gender issued in 2016 in the context of the Clean India Mission specifically stipulate that members of the transgender community are free to use the toilet for the gender they identify with. Yet, in the State of Manipur, the Special Rapporteur heard testimonies that transgender persons still faced difficulties in accessing public toilets and often were subject to harassment and humiliation.

F. Sustainability

49. Understanding sustainability from a human rights perspective greatly contributes to achieving lasting solutions to water and sanitation challenges for present and future generations (see A/HRC/24/44, para. 85). In order for services to be sustainable, they must be available and accessible to everyone on a continuous and predictable basis, without discrimination (ibid., para. 20). There must be "permanent beneficial change" that flows from quality services and sustained behavioural change or, in human rights terms, progressive realization towards fully realizing the human rights to water and sanitation for everyone. Once services and facilities have been improved, the positive change must be maintained and slippages or retrogression must be avoided.

50. The Government emphasized that "sustainability is one of the hallmarks of [the Clean India Mission]. There is a detailed sustainability protocol, including continued [information, education and communication] post ODF [open defecation free], and a sustainability verification of ODF verified villages." It stated also that the National Rural Drinking Water Programme earmarked a "10% allocation for water security through source and system sustainability".[25]

51. The Clean India Mission does possess an explicit component on information, education and communication. The central Government is apparently allocating the expected budget to such activities; however, not all state governments are doing so. The Special Rapporteur heard from several civil society organizations and from promoters of information, education and communication that insufficient financial resources or inadequate methodology for this fundamental aspect of the programme can sometimes prevent achievement of the desired outcomes: the sustainable and safe usage of toilets and the elimination of open defecation.

52. The findings of assessments of the sustainable and safe usage of toilets, especially those implemented through the Clean India Mission, vary widely and depend on the methodology. According to surveys conducted in 2016 and 2017 by the Quality Council of India, which covered 140,000 households, approximately 91 per cent of toilets that had been built were being used. An assessment conducted by WaterAid that was focused on a smaller sample (1,024 households), with no evidence of bias against the programme, suggests a different scenario, highlighting that usage soon may start to decrease without continued efforts to make infrastructure sustainable. According to the survey, "only 33 per

[24] *National Legal Services Authority v. Union of India and others*, Writ Petition (Civil) No. 400 of 2012, judgment of 15 April 2014.

[25] Government of India, press release (10 November 2017).

cent of the constructed toilets were deemed sustainably safe (eliminating risks of contamination in the long term); 35 per cent were safe, but would need major upgrades to remain safe in the long term; and 31 per cent were unsafe, creating immediate health hazards".[26] Indeed, the Special Rapporteur observed several abandoned or poorly maintained toilets. Toilets may also be installed with doors that do not have locks, which negatively affects users' privacy. Conversely, the Special Rapporteur observed and heard of several cases where functioning toilets exist in public places but are left locked.

IV. Leaving no one behind

53. The Sustainable Development Goals resonate with the human rights key principle and call for Governments to "leave no one behind", particularly in respect of access to water and sanitation. Targets 6.1 and 6.2 require equitable access to the services, and special attention to be paid to the needs of, women and girls and those in vulnerable situations. To uphold its commitment to achieving the Goals by 2030, the Government needs to monitor the progress towards targets 6.1 and 6.2. Moreover, to uphold the country's human rights obligations, it must develop methodologies that take into account the normative content of the human rights to water and sanitation, and monitor inequalities and non-discrimination in access to those services. The Special Rapporteur emphasizes the importance of adopting a national consensus on the next steps in water and sanitation policies so that no one is left behind.

54. Fulfilling the pledge to leave no one behind starts with reaching those who are furthest behind. While a large part of the population in India enjoys access to water and sanitation, certain groups in vulnerable situations are still being left behind, either due to lack of access to services or to the lower level of the services to which they have access. These include Dalits ("untouchable communities"), tribes/Adivasis (ethnic groups in hard-to-reach areas), nomadic tribes, denotified tribes (tribes that had been criminalized and subsequently decriminalized, or "denotified", after independence), Muslim minority communities, persons with disabilities, the lesbian, gay, bisexual, transgender and intersex population, women in sex work, fisher communities, urban poor (slum dwellers), orphan children, homeless people, the migrant population and others.[27] Leaving no one behind is closely linked to the overarching principles of equality and non-discrimination. Non-discrimination is an immediate and cross-cutting obligation of the State; discrimination must be eliminated both formally and substantively,[28] and is not subject to progressive realization.

55. The Government stated that the national sanitation programme focused on "especially abled, transgenders, poor and backward classes" and that the National Rural Drinking Water Programme prioritizes funds for scheduled castes and scheduled tribes.[29] The guidelines of the Clean India Mission component focused on rural areas explicitly stipulate that incentives be given to marginalized sections of the society, including people living below the poverty line, scheduled castes and scheduled tribes, persons with disabilities, widows and old-age pensioners, landless labourers with homesteads, small farmers, marginal farmers and women-headed households. States are also given flexibility under the rural component to increase the amount for special cases. For instance, Assam provides extra incentives for households in flood-affected and flood-prone areas. In Karnataka, an extra incentive of 3,000 Indian rupees is provided to scheduled castes and scheduled tribes. In Jharkhand, 17,000 Indian rupees are provided as an incentive to construct toilets for persons with disabilities.

---

[26] WaterAid, "Quality and sustainability of toilets", p. 3.

[27] Youth For Unity & Voluntary Action, "Sustainable Development Goals: Agenda 2030 'Leave no-one behind'" (2016), p. 7.

[28] Committee on Economic, Social and Cultural rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, paras. 7–8.

[29] Government of India, press release (10 November 2017).

56. While taking note of the allocation of resources for certain groups in vulnerable situations under a specific national policy, the Special Rapporteur emphasizes that States cannot fully realize the human rights to water and sanitation without addressing stigma as a root cause of discrimination and other human rights violations (see A/HRC/21/42). Tackling root causes is essential to address incidences of lack of access to water and sanitation, where people in particular groups are systematically neglected compared to the rest of the society. The State is obligated to address situations where people are excluded from the use of water and sanitation facilities because they find themselves unable to access public toilets, have no alternatives or are threatened with violence and fear for their physical and mental integrity. The obligation extends to the prohibition of inhuman and degrading treatment and the protection of the right to privacy.

57. The Special Rapporteur's findings from the visit reveal that several determinants have a heightened likelihood of predicting where or why people have lower quality access to adequate water and sanitation services: disability, gender, caste, tribe, poverty, place of residence (urban or rural) and land tenure (especially in urban areas, e.g. residence in formal vs. informal settlements), among others. The ways in which these factors can have an impact on one's access are diverse but, importantly, a combination of any of these factors is likely to have a multiplying effect. For example, persons with disabilities widely suffer from a lack of accessible sanitation infrastructure, but women and girls with disabilities can suffer more, and still more from the added lack of material and social conditions to ensure menstrual hygiene management.

58. The overall targets for increasing access to water and sanitation must, therefore, be complemented by targets to reduce inequalities. As a first step, this requires the State to identify vulnerable and marginalized populations, as well as patterns of discrimination and their underlying structural causes. The Special Rapporteur highlights the importance of collecting and analysing data disaggregated by wealth level, migratory status, ethnic group and other grounds of discrimination, as such information may have an impact on the formulation of national policies with regard to ensuring that individuals and communities in vulnerable situations are prioritized and monitored. In this section, the Special Rapporteur provides a snapshot of the inequalities faced by certain groups in vulnerable situations that drew his attention during the visit, as a starting point for the Government to carry out identification of the vulnerable and marginalized population.

A. Scheduled castes

59. According to the official census of 2011, Dalits (referred to as "scheduled castes") constitute more than 201 million people. This figure does not include Dalits who have converted or are born and raised within non-Hindu religious communities, such as the Dalit Muslim and Christian communities; unofficial statistics estimate that the actual number of Dalits in India is much higher (see A/HRC/31/56, para. 33).

60. Dalits represent the victims of the gravest forms of caste-based discrimination, have often limited or unequal access to resources and services, including water and sanitation, and are disproportionately affected by poverty. In India, more than 20 per cent of Dalits still do not have access to safe drinking water and about 50 per cent of Dalit villages are denied access to water sources.[30] During the visit, the Special Rapporteur heard numerous testimonies from Dalits regarding incidents where they have been unable to collect water from shared wells or public taps, or have been fined for touching or drinking from a common water tap. Some Dalits have been beaten and killed. Dalit women and girls have been subjected to physical assault and violence; in one incident a pregnant Dalit woman was assaulted and abused while she was defecating in the open. In several incidents Dalit women and girls were kidnapped and raped while returning from defecating in the open. Furthermore, Dalit students were not allowed to drink water directly from the water pot and

[30] Working Group on Human Rights in India and the United Nations, "Right to water and sanitation", factsheet for the third-cycle universal periodic review of India. Available from http://wghr.org/wp-content/uploads/2017/03/Fact-Sheet-05-Right-to-Water-and-Sanitation.pdf.

were forced to request students from other castes to pour the water into their hands from a distance.

B. Persons with disabilities

61. According to the 2011 census, persons with disabilities constitute 4 per cent of the population. Independent studies by civil society have found that the figure is closer to 6 to 7 per cent — approximately 70 million people. Groups of persons with disabilities voiced concern about the widespread lack of accessibility of water and sanitation services in various public establishments, such as schools, transport hubs and police stations. The Special Rapporteur raises the concern that the government subsidies for households to build toilets are not adequate for the needs of persons with disabilities. While some states provide additional incentives for toilets for persons with disabilities, the standard incentive of 12,000 Indian rupees does not take into account the need for adapted toilets, for example. Especially where wheelchairs are used, special arrangements are required and the standard width of the door is not sufficient.

C. Place of residence

62. Among the list of prohibited grounds for discrimination, article 2 (2) of the International Covenant on Economic, Social and Cultural Rights refers to "other status", which includes the prohibition of discrimination based on place of residence. [31] Furthermore, the Committee on Economic, Social and Cultural Rights specifies that no household should be denied the right to water on the grounds of their housing or land status.[32] In the context of India, discrimination based on place of residence has critical relevance due to the large proportion of slums and the homeless population.

1. Informal settlements, resettlements and homelessness

63. Access to drinking water and sanitation in informal settlements is a concern in the various slums that the Special Rapporteur visited in Delhi, Lucknow, Kolkata and Mumbai. In the case of Mumbai, the country's most populous city, slums are home to more than half of the city's 18 million inhabitants. The Special Rapporteur observed that adequate access to water and toilets does not exist in most of the slums that he visited.

64. While some individuals choose to defecate in the open as a matter of preference, the Special Rapporteur visited areas where open defecation remained the only feasible option. This was the case in slums and resettlement sites, where community toilets were often far away or non-existent. In the non-notified (not legally recognized) slum Vinaykpuram, in Lucknow, all dwellers defecated in the open. During the visit around the slum, the Special Rapporteur saw no functional community toilets close by and the only toilet, which was dysfunctional, was built only two years ago. In Delhi, the Special Rapporteur visited Savda Ghevra, a planned resettlement site built in 2010 on 257 acres of land. While the residents of Savda Ghevra had access to drinking water from the Delhi Jal Board water trucks, they did not have toilet facilities on their premises and had to rely on community toilets far from their dwellings.

65. In 2014, Bombay High Court held that slum dwellers who occupied illegal huts could not be deprived of their fundamental right to water.[33] The Court also held that "as the right to life guaranteed under Article 21 of the Constitution of India includes right to food and water, the State cannot deny the water supply to a citizen on the ground that he is residing in a structure which has been illegally erected".[34]

---

[31] See Committee on Economic, Social and Cultural Rights, general comment No. 20, paras. 27–35.

[32] See Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 16 (c).

[33] *Pani Haq Saiti & Ors. v. Brihan Mumbai Municipal Corporation & Ors.*

[34] Ibid., para. 11.

66. Due to the lack of formal recognition of settlements established after 2000, municipalities often deny such settlements adequate services for fear of legitimizing them. The conditions of access to water and sanitation facilities in settlements can differ greatly and can be considerably influenced by the legal recognition of the settlement. In certain notified (legally recognized) settlements that the Special Rapporteur visited, residents had access to some services from public authorities, including water tankers providing free water a few times a week. However, non-notified settlements were denied any intervention from public providers. While some stand posts and boreholes were available within or close to some non-notified settlements, they were not always constructed by the public authorities. Additionally, it was not certain whether the quality of the water was monitored and whether it met the standards for drinking water. In an informal settlement located in Bhim Nagar, Maharashtra Nagar, in Mumbai, access to water for a total of 160 houses came from a variety of sources, some close by, including holes dug in the ground to access poor quality groundwater, and others farther away.

2. Population living in rural areas

67. According to a global report published in 2017, in rural areas, where 67.5 per cent of the country's residents live, access to piped water is only available to 31 per cent of the population (about 270 million people out of the country's 1.3 billion).[35] Meanwhile, in urban areas, it is available to 69 per cent of the population. A similarly stark divide separates the proportion of people with access to water on premises in rural versus urban areas: 49 per cent and 73 per cent, respectively, in 2015.[36]

68. One group that lives predominantly in rural areas is the scheduled tribes population. According to the 2011 census, approximately 90 per cent of members of scheduled tribes live in rural areas. The Special Rapporteur met with a representative of a scheduled tribe population of about 12,000 people living in Sanjay Gandhi National Park, near the Borivali district, 30 to 40 kilometres from Mumbai. Since neither district nor central Government authorities have provided them with water and sanitation services, for several years the members of the tribe have had no choice but to defecate in the open and, at times, risk being attacked or even killed by wild animals. "*Pani nahi, shouchalay nahi*" (no water, no toilet) was the way the representative expressed his concern to the Special Rapporteur.

3. Communities living near megaprojects

69. Rural populations' access to water is also affected by large projects that directly or indirectly affect essential water sources used for drinking, domestic tasks or livelihoods. In Manipur, the Special Rapporteur was informed about how large infrastructure (dams, railways, roads and industrial projects) affects water sources of rural villages. In particular, he visited two communities downstream of the Thoubal multipurpose dam project that no longer relied on the river as their source of drinking water, due to the deteriorated water quality and the irregular flow, and that had to pay for access to the water source of a nearby village. The Special Rapporteur is concerned that the lack of prioritization in allocating water for domestic and personal use may negatively affect the access to drinking water of those living in vulnerable situations. In some of the villages visited, the Special Rapporteur was informed that the local authorities had only partially constructed household toilets and, while the intended beneficiaries waited for the construction to be finished, they had no choice but to defecate in the open.

D. Undocumented population

70. Another group that fell outside the purview of any government protection was the undocumented population living in 51 former Bangladeshi enclaves situated in India and 111 former Indian enclaves located in Bangladesh. Since the signing in 2015 of a land boundary agreement by the Governments of India and of Bangladesh, 922 people have been

[35] WHO and UNICEF, *Progress on Drinking Water, Sanitation and Hygiene*, p. 65.

[36] Ibid.

living in three resettlement camps situated in Dinhata, Mekhliganj and Haldibari, in Cooch Behar district, West Bengal. Those people do not possess a toilet within their houses and are forced to defecate in the open. Access to water is provided through a few tube wells dug by the Government, which provide water of inadequate quality. It is important to highlight, in this particular context, the obligation of India to uphold the rights to water and sanitation not only to Indians but also to foreigners who reside in the territory as well as to those people who do not have proper identity documentation.

V. Recommendations

71. **In the light of the above observations, the Special Rapporteur recommends that the Government of India:**

(a) **Adopt a legislative framework that recognizes the human rights to water and sanitation at the national level and, in particular, ensure the harmonization and consistency of that legislative framework across states and the union territories of India;**

(b) **Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;**

(c) **Clarify, in a transparent manner, the roles and responsibilities of institutional actors in the water and sanitation sector from all dimensions: vertically, among central, state, local and rural governments; and horizontally, among entities within the different tiers of government;**

(d) **Establish an independent regulatory mechanism with adequate financial and human resources to monitor the implementation of the human rights to water and sanitation, including all the normative content of those rights;**

(e) **Continuously monitor the implementation of national policies on water and sanitation from a human rights perspective and reassess those policies to strengthen the incorporation of the human rights framework as a whole;**

(f) **Monitor compliance with the human rights to safe drinking water and sanitation at all levels of the government and by formal and informal service providers;**

(g) **Reconcile the efforts to achieve open-defecation-free status with the obligations to uphold the dignity of all persons and not to violate other fundamental rights;**

(h) **Ensure that public sanitation facilities are available continuously and, in case of shutdown, ensure alternative options so that people are not forced to defecate in the open;**

(i) **Guarantee access to sufficient and continuous water and sanitation facilities in public places for those on the move daily, including homeless persons, street vendors, rickshaw drivers and seasonal migrant workers;**

(j) **Ensure balance in efforts and measures to monitor the construction of toilets with respect to monitoring those who do not have access to sanitation facilities;**

(k) **Strengthen initiatives for implementing faecal sludge management, safe transport and disposal of grey water, and wastewater treatment, to reduce health hazards arising from the contamination of water;**

(l) **Ensure that sanitation facilities are acceptable for all individuals, taking into consideration the characteristics of particular groups, which may have different sanitation needs;**

(m) **Maintain a strong surveillance system to identify, monitor and prevent aggressive and abusive practices, such as coercion, shaming, violence or punishment, in the effort to eliminate open defecation in the country;**

(n) Establish a monitoring system to follow the process of emptying pit latrines under the national programmes, in order to control possible trends of increases in manual scavenging practices, ensuring that this practice is not carried out in a caste-discriminatory manner;

(o) Identify the persisting problems related to drinking water quality and assess the effectiveness of the measures implemented to monitor and respond to water contamination;

(p) Strengthen access to information, including by making information related to drinking water quality available to the public in a user-friendly manner;

(q) Identify populations in vulnerable situations, including non-nationals and those without proper identity documentation, and identify patterns of discrimination, and their underlying structural causes, that heighten the likelihood of lower quality access to adequate drinking water and sanitation services;

(r) Disaggregate data by wealth level, migratory status, ethnic group, scheduled caste, scheduled tribe and other grounds of discrimination, identifying patterns of inequality, as such information may have an impact on the formulation of national policies;

(s) Provide equal access to water and sanitation services irrespective of the place and status of residence, including in informal settlements and resettlements and for persons who are homeless;

(t) Make human rights impact assessments a requirement for all megaprojects, including the construction of hydroelectric dams.

United Nations A/HRC/39/55/Add.2

General Assembly

Distr.: General
18 July 2018

Original: English

Human Rights Council
Thirty-ninth session
10–28 September 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his mission to Mongolia

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, on his official visit to Mongolia from 9 to 20 April 2018. During the visit, the Special Rapporteur examined the access to water and sanitation services for Mongolians living in urban and rural areas, including the nomadic population, from the perspective of human rights.

GE.18-11927(E)
1811927

Please recycle

Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his mission to Mongolia*

Contents

		Page
I.	Introduction	3
II.	The general context of access to water and sanitation in Mongolia	3
III.	Legal, policy and institutional framework	5
	A. Legal framework	5
	B. Policy framework	6
	C. Institutional framework	7
IV.	Human rights to drinking water and sanitation	8
	A. Availability	8
	B. Accessibility	10
	C. Affordability	12
	D. Quality and safety	14
	E. Acceptability, privacy and dignity	17
V.	International development cooperation	17
VI.	Conclusions and recommendations	17

* Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council resolution 33/10, the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, undertook an official visit to Mongolia from 9 to 20 April 2018, at the invitation of the Government.

2. During his two-week visit to Mongolia, the Special Rapporteur met representatives of several tiers of the Government,[1] representatives of international organizations,[2] multilateral funders[3] and civil society, and several residents. The Special Rapporteur thanks the Government for the invitation and organization of the visit. He would like to thank particularly those who took the time to meet with him and who generously opened their homes to him. He furthermore expresses appreciation to the office of the United Nations Resident Coordinator in Mongolia for facilitating the visit. Finally, he would like to thank the general public who followed the visit on social media.

II. The general context of access to water and sanitation in Mongolia

3. Several aspects of the culture, history, geography and socioeconomic trends in Mongolia have an impact on the situation of access to water and sanitation. One element is the extreme continental climate of Mongolia and climate change, both of which affect the extent and frequency of weather disasters. They include the phenomenon of *dzuds*, a winter weather disaster that results in inadequate pasture for the livestock. In general, winters in Mongolia are dry and long, lasting six months, and temperatures can reach as low as minus 40°C. Ulaanbaatar is the coldest capital city in the world. The extreme continental climate has contributed to making access to drinking water and sanitation services a long-lasting challenge. For instance, water and sanitation in Mongolia need to be improved, together with access to central heating in households to prevent water pipes from freezing and ensuring the availability of hot water. It was explained to the Special Rapporteur that some households prioritize heating over access to water and sanitation.

4. Another element that significantly affects access to water and sanitation is the traditional dwelling, the *ger*. A *ger* is a portable roundhouse covered by felt. It is a unique dwelling that reflects the way that the nomadic population of Mongolia lives. Owing to the unique features of the *ger*, residents are particularly vulnerable to the cold climate when it comes to water and sanitation. Those living in apartments with connected systems have early preparedness measures for the harsh winter, repairing the pipes and checking their status to prevent them from freezing. However, the residents of *ger* areas have no protection from the cold when they collect water from a kiosk that is 500 metres away, or when they use the unheated toilet located outside their homes. In the *ger* areas, the Special Rapporteur observed that toilets, which are largely very unsafe, are located outside the *gers* but inside the *ger* compound. In the cold weather, the Special Rapporteur was told that residents face the dilemma of either heating a *ger*, which is the main living space, or

[1] At the central level, the Special Rapporteur met with representatives of the Ministries of Foreign Affairs; of Environment and Tourism; of Construction and Urban Development; of Education, Culture and Science; of Labour and Social Protection; of Finance; of Health; and of Justice and Internal Affairs; Mongol US (MGL Water Corporation); National Water Committee; General Agency for Specialized Inspection; Public Health Institute; Water Services Regulatory Commission; National Human Rights Commission; State Great Hural (parliament) of Mongolia; the Parliamentary Committee on social policy, education, culture and science. At the local government level, he met with representatives of the Municipality of Ulaanbaatar; the Water Supply and Sewerage Authority of Ulaanbaatar, the Housing and Communal Services Authority of Ulaanbaatar; Nalaikh District of Ulaanbaatar; and the Tsogttsetsii district (*soum*).

[2] United Nations Population Fund, United Nations Children's Fund, United Nations Development Programme. World Health Organization and International Organization for Migration.

[3] Asian Development Bank, Japanese International Cooperation Agency and the Millennium Challenge Corporation.

heating the toilet. In addition, the default way of upgrading the sanitation solutions, for example installing toilets and developing a sewerage network, faces challenges. Building toilets inside the *ger* is not possible as the *ger* is too small and in general, there are no walls dividing the inside. Further, because of the cold climate, sewerage pipes would need to be installed deeper in the ground than the standard depth to prevent the pipes from freezing.

5. The third related phenomenon is the rapid urbanization and migration of the rural population to Ulaanbaatar and other urban areas. Owing to the socioeconomic changes in the 1990s, and the impact thereof, most rural migrants settled in informal communities in the *ger* areas. The rapid urbanization that has been observed in recent years was mainly the result of the high level of poverty in rural areas triggered by harsh winters that affect herders' livelihoods. The *ger* has been used as a dwelling not only for the nomadic population, but also for those who have migrated from rural to urban areas, settling in the *ger* areas, as apartments are often unaffordable and unavailable for them. The convenience of mounting, dismounting and transporting a *ger* has led to a situation in which the speed of population growth in urban areas, mostly due to migration, is faster than the expansion of services provided, including water and sanitation. The migration of the nomadic population to urban areas has extended the *ger* areas in cities and villages. Owing to migration to the city, the population of the *ger* area of Ulaanbaatar is increasing at 5 per cent annually.[4] The expansion of the *ger* areas without prior planning and management causes problems in relation to water, sanitation and wastewater disposal, among others. It has also exacerbated unequal access to drinking water and sanitation services between those living in apartments and houses in areas with centrally connected pipes and those living in the *ger* areas without a piped connection.

6. A fourth element is that Mongolia is known for its nomadic herding culture which shapes the values, practices and lifestyles of Mongolians today (see A/HRC/37/58/Add.2, para. 18). More than one third of Mongolians lead a nomadic lifestyle, relying on their livestock as the main source of their income, food and, in general, their livelihood. In that context, the Special Rapporteur examined access to water in Mongolia, including drinking water, water used for personal and domestic purposes, such as washing and cooking, water used for subsistence farming and water for livestock, as it is crucial to the nomadic way of life.

7. Finally, mining, which requires a large amount of water for its operations, has expanded in Mongolia with exploration and exploitation covering approximately 7 per cent of the territory (see A/HRC/37/58/Add.2, para. 49). According to estimates, Oyu Tolgoi, a massive copper and gold mine, will account for as much as one third of gross domestic product by 2020.[5] While mining contributes greatly to the economy of Mongolia, it raises serious environmental concerns, including water pollution and groundwater overuse (see A/HRC/37/58/Add.2, paras. 22 and 45–63).

8. Despite these challenges, some commendable efforts have been made in the water and sanitation sector in comparison to the 1990s, when Mongolians had to queue in line for two to three hours in the cold winter days to collect water. According to the 2010 population and housing census, 42 per cent of households living in buildings have access to a centralized water supply, while 56 per cent of the population rely on water located outside the premises. In addition, 36 per cent of the population have access to toilets not shared with others while 55 per cent use outdoor toilets.

9. Mongolia did not achieve target 7.C of the Millennium Development Goals to halve, by 2015, the proportion of the population in 1990 without sustainable access to safe drinking water and basic sanitation. According to the recent report on the World Health Organization/United Nations Children's Fund (WHO/UNICEF) joint monitoring programme (which was the first monitoring report produced after the adoption of the 2030 Sustainable Development Agenda), in 2015, 84 per cent of the Mongolian population had access to basic water services and 59 per cent to basic sanitation services. In other words,

[4] Information from the National Statistics Office 2013, provided by the Government in its submission.

[5] See National Secretariat for the second compact agreement between the Government of Mongolia and the Millennium Corporation of the USA, *Mongolia Constraints Analysis* (August 2016).

most Mongolians collect drinking water from water kiosks outside their homes and half the population has access to pit latrines. These figures are much lower when the concept of safely managed services in targets 6.1 and 6.2 of the Sustainable Development Goals is applied: as of 2015, only a quarter of the population received water on the premises and only 13 per cent had sewerage connections. Those numbers suggest that both drinking water and sanitation require further attention and must be given due priority by the Government.[6]

III. Legal, policy and institutional framework

10. At the international level, the human rights to water and sanitation are widely recognized. However, in the Mongolian context, the Special Rapporteur observed that government officials, civil society and the general population lack a clear understanding of the meaning of water and sanitation as human rights, which hampers the sound implementation of human rights obligations by the Government. One reason that contributes to this lack of knowledge is the absence of an explicit recognition of the human rights to water and sanitation in the legal and policy framework.

A. Legal framework

11. Mongolia is a party to several international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, which stipulates the right to an adequate standard of living, including the rights to water and sanitation. Mongolia has also supported United Nations resolutions that recognize the human rights to water and sanitation.[7] In accordance with article 10 of the Constitution, the international human rights treaties to which Mongolia is a party and particularly those that stipulate the human rights to water and sanitation become effective as domestic legislation upon the entry into force of the laws on their ratification or accession. However, the Special Rapporteur is of the opinion that the legal framework of Mongolia does not enshrine the normative content of the human rights to water and sanitation as a package.

12. The human rights to water and sanitation are not explicitly recognized in the Constitution. Instead, those rights are inferred from article 16.2 on the right to a healthy and safe environment. Also, article 6.1 of the Constitution states that water and water resources are State-owned and it provides a legal basis for water resource utilization and protection of the water supply that are under government control and regulation. The legal application of the rights to water and sanitation would therefore require interpretation by judicial bodies and policymakers, which can result in inconsistencies and implementation of only selected elements of their normative content.

13. Legislation on water and sanitation is equally inadequate in that respect. Currently, three laws provide a legal basis for access to water. The 2011 law on the utilization of water supply and sewage in urban settlements provides legal measures in relation to a private agreement between the water provider and the consumer. It addresses the issues of availability and access to water. Second, in article 10 of the law on the exploitation of natural resources, payment for water used for drinking and household purposes is addressed. Third, the law on water (revised in 2012) regulates the effective use, protection and restoration of water and water basins. The current legal framework does not address the entire set of the normative content and principles of the human rights to drinking water and sanitation. For instance, it does not address the issues of affordability and the prohibition of disconnection owing to inability to pay, nor the principles of equality and non-discrimination, progressive realization, the right to information, the right to participation and accountability.

[6] See *Progress on Drinking Water, Sanitation and Hygiene*, available at https://washdata.org/sites/default/files/documents/reports/2018-01/JMP-2017-report-final.pdf.

[7] Mongolia voted in favour of Human Rights Council resolution 33/10 and co-sponsored General Assembly resolution 72/178.

14. Replacing the sanitation law of 1998, the law on hygiene was passed in 2016, which addresses the issue of decentralized sanitation facilities, referring to sanitation facilities not connected to a central sewerage system. Article 4 requires that water be provided to satisfy the conditions for drinking and household use and article 4.1.4 addresses measures to improve the water quality by monitoring centralized and decentralized drinking water supply and water quality and safety at the household level. It is focused on hygiene from the perspective of an environment for healthy and safe living conditions and therefore does not incorporate social, cultural and economic issues such as acceptability dimensions, for instance, a gender perspective and references to menstrual hygiene management issues. The law furthermore does not address the affordability dimension of sanitation.

15. Additionally, the Special Rapporteur is concerned that no legislation addresses water supply and sanitation for the nomadic population, or the specific needs of the rural population.

16. The Special Rapporteur stresses that having a national law explicitly recognizing the human rights to water and sanitation is key to ensuring the justiciability of those rights. It is crucial that national legislation provides a clear guarantee to individuals and groups who are alleged victims of a violation of their rights to water and sanitation so that they can file a complaint before a judicial body, request legal remedies and have those remedies enforced. Justiciability of the human rights to water and sanitation is an essential precondition to ensuring the effectiveness of judicial mechanisms as part of the enforceability dimension of accountability (A/73/162). Furthermore, justiciability of those rights also has an impact on enforcement measures. The Special Rapporteur emphasizes that mechanisms should be in place to monitor compliance with established standards, impose sanctions and ensure that corrective and remedial actions are taken.

17. As the human rights to water and sanitation are not recognized in the Constitution, the Constitutional Court does not have the jurisdiction to adjudicate cases and issues as a violation of the human rights to water and sanitation, including disconnection. The Special Administrative Court allows civil society and residents to bring cases against private water and sanitation service providers delegated by municipalities. However, the Special Administrative Court has not adjudicated cases from a human rights perspective and has not incorporated accountability measures to hold governmental actors accountable for human rights obligations. That illustrates a gap in the exercise of the right of the Mongolian population to remedy and a limitation for the judiciary in addressing access to water and sanitation as a human rights issue.

B. Policy framework

18. In addition to ensuring that human rights to water and sanitation are clearly reflected in a holistic manner in the legislation and the respective regulatory instruments, the legal recognition of the human rights to water and sanitation then needs to be translated into policies and programmes.

19. The national water programme, currently in its second stage for the period 2016–2021, aims to provide safe and clean water that meets the standard of health and hygiene to at least 60 per cent of the rural population and 70 per cent of the urban population and to connect 30,000 households to central water distribution pipes. The agency officially responsible for the implementation of the programme is the Ministry of Environment and Green Development. Under its supervision, the National Water Committee is in charge of leading and monitoring the implementation and coordinating the different agencies that are involved. The action plan for the implementation of the national water programme defines specific activities and assigns them to one or several implementing agencies.

20. In 2014, Mongolia's first green development policy was adopted by the parliament. The policy supports the commitments of the United Nations Conference on Sustainable Development in Rio de Janeiro in 2012 to promote sustainable, green development. According to the action plan, one of the actions aimed at achieving that objective is to provide at least 90 per cent of the population with access to safe drinking water and 60 per

cent of the population with access to improved sanitation facilities by increasing the capacity and productivity of the water supply and sewerage system.

21. In 2016, Mongolia adopted a national implementation goal, the Sustainable Development Vision 2030, which replaced the comprehensive national development strategy related to the Millennium Development Goals. Its aims include ensuring that 80 per cent of the population is supplied with safe drinking water by 2020, 85 per cent by 2025 and 90 per cent by 2030 and ensuring that 40 per cent of the population uses improved sanitation and hygiene facilities by 2020 and 60 per cent by 2030. According to the National Development Agency, Mongolia intends to integrate the implementation and monitoring of the Sustainable Development Vision 2030 in line with the Sustainable Development Goals.

22. In the view of the Special Rapporteur, the area of water and sanitation in the Sustainable Development Vision 2030 is not fully aligned with the commitments that Mongolia made under the Sustainable Development Goals. In the Sustainable Development Vision 2030, drinking water and sanitation are subsumed into Sustainable Development Goal 6 as a whole and the short-, medium- and long-term goals ("objectives") are largely disconnected from the Sustainable Development Goals, both in their formulation and in their aspiration. With this approach, the specificities of targets 6.1 and 6.2 of the Goals might be lost. The Special Rapporteur is concerned that without the involvement of key ministries, the human rights approach and the social aspects of both targets will be neglected. It is important to remember that "leaving no one behind" is the main message of the Sustainable Development Goals. Furthermore, targets 6.1 and 6.2 on access to water and sanitation aim to provide universal safely managed services to all — not "improved services", which was the terminology used in the Millennium Development Goals. The Special Rapporteur recommends that the Government align the Sustainable Development Vision 2030 on water and sanitation with the agenda of the Sustainable Development Goals and implement it through a human rights lens.

C. Institutional framework

23. Another factor that the Special Rapporteur observed that constitutes a limitation for implementing the human rights to water and sanitation are the institutional arrangements of the water and sanitation sector in Mongolia. As water touches upon every aspect of life, several government bodies have functions and responsibilities related to water and sanitation services. However, those bodies lack clear coordination. Without a clearly established human rights framework and adequate coordination among government entities, the water and sanitation sector therefore inevitably fails to take the normative content and principles of the human rights to water and sanitation into consideration. Responsibility is scattered among numerous governmental bodies and institutions, which prevents individuals from effectively holding the Government accountable for its human rights obligations. The principle of accountability requires that actors involved in the provision and regulation of water and sanitation services and those who are tasked to realize the human rights to safe drinking water and sanitation must have clearly defined roles, responsibilities and performance standards (A/73/162).

24. Following the dissolution of the National Water Authority in 2012, there are currently several ministries tasked with fragmented aspects of providing drinking water and sanitation services to the Mongolian population, resulting in a patchwork of ways in which the Government addresses the human rights framework. While the national water programme, approved in 2010, provides a basis for coordination between the Ministry of Environment and Tourism and the National Water Committee, as the leading agencies for the programme, the scope of implementing the human rights to water and sanitation extends beyond those entities. Each ministry has its own role in the water and sanitation policy, but there is no unified national policy, nor a body in the central Government tasked with ensuring proper and effective coordination. It appears that the drinking water and sanitation agenda is currently diluted in the agenda of water resources management. This lack of a clear institutional framework and a centralized strategy shifts the burden of responsibility to local governments, which are responsible for the actual provision of services to the local

population. The Special Rapporteur also emphasizes that there is no nationally designated agency with a clear mandate to plan and implement interventions in the area of sanitation. In particular, there is no agency in charge of monitoring sanitation in the *ger* areas.

25. The Special Rapporteur recommends that in any current or future institutional reform, a governmental body be tasked to coordinate the water and sanitation policy at the level of the central Government, together with focal points in each ministry. That coordination should be approached through the human rights framework and should ensure that the responsible bodies are held accountable. The current deficit in the access to water and sanitation services in the country requires effective efforts from the Government that are fully aligned with human rights.

26. Government institutions responsible for the normative content of the rights to water and sanitation are introduced in the relevant part of section IV.

IV. Human rights to drinking water and sanitation

27. In resolution 72/178, the General Assembly recognized that "the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use, and that the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living". Together with general comment No. 15 (2002) on the right to water of the Committee on Economic, Social and Cultural Rights and the report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation (A/HRC/12/24), in his previous report the Special Rapporteur clarified the meaning of human rights standards and principles for sanitation, water and hygiene, in the light of different types of services (A/70/203).

A. Availability

28. Availability refers to the quantity of safe water available for domestic and personal use and the necessary availability of water resources for those uses. The normative content of the human right to water requires that the water supply for each person be sufficient and continuous for personal and domestic use, which includes water for drinking and personal hygiene and for personal and domestic uses, such as cooking, the preparation of food, laundry and cleaning (see Committee on Economic, Social and Cultural Rights general comment No. 15, para. 12). As for sanitation, a sufficient number of sanitation facilities has to be available. The necessary structures also have to be put in place to ensure the availability of services (see A/70/203, para. 7).

29. The Ministry of Environment and Tourism is responsible for identifying water resources to ensure the availability of drinking water. However, the availability of water resources alone does not adequately cover access to drinking water. The availability of water resources must be accompanied by the availability of infrastructure and facilities for individuals to have access to water and sanitation. For that, the Ministry of Construction and Urban Development deals with construction related to infrastructure and at the local level, the Water Supply and Sewerage Authority of Ulaanbaatar is responsible for building public infrastructure.

1. Continuous availability

30. Water services must be continuous, but the Special Rapporteur observed several cases of discontinuous services. For instance, several public kiosks that the Special Rapporteur visited in the *ger* areas were closed one or two days a week and also during the night. The opening hours of water kiosks are not convenient for the working population. Households whose members had jobs reported that their access to water was limited because kiosks were closed after working hours. In 2017, 42 per cent of the population had

a discontinuous supply of water.[8] To address this, government entities identified an automated water-dispensing machine, referred to as a "smart water kiosk", as a solution to provide a continuous water supply to the residents of *ger* areas. There are around 100 smart water kiosks in the *ger* area of Ulaanbaatar and some rural areas, such as Dalanzadgad, have piloted smart water kiosks.

31. Continuous service of sanitation facilities in educational institutions, including dormitories in schools, is another area of concern. While nearly half the schools in Mongolia have indoor toilets, it remains a concern as to whether the schools are able to afford the fees to maintain them. For instance, where a sewerage system is lacking, wastewater needs to be drained and tanks emptied, incurring costs. As such, it was explained to the Special Rapporteur that some schools lock the bathrooms during school hours, limiting access for students. The Special Rapporteur wishes to emphasize that the availability of toilets needs to be accompanied by financial support in order to ensure that they are continuously available for use.

2. Water consumption

32. The varying levels of access have a strong effect on the disparity in the consumption of water between those living in the *ger* areas and those in apartments. In the apartment areas, daily water usage reaches approximately 200 litres per person, while the daily water consumption of residents in the *ger* area of Ulaanbaatar is lower than the recommended minimum quantity of water needed in emergencies, which is 15 litres per person according to WHO standards. At one water kiosk in Ulaanbaatar, the Special Rapporteur met a man who was collecting 50 to 60 litres for his family, which consisted of three adults and seven children.

33. The low level of water consumption in the *ger* areas is due to several issues: the distance between household and water kiosks; the difficulty of reaching kiosks and fetching water from kiosks; household hygiene practices and behaviours; excreta disposal through pit latrines and the lack of shower facilities in homes. In addition, it was explained to the Special Rapporteur that *ger* area residents prefer not to collect large amounts of water because they have limited capacity for water storage and for water disposal during winter, when wastewater cannot soak into the frozen soil.

34. The Special Rapporteur also learned that there are significant differences in water consumption between different kiosks supplying water to the same number of consumers. The location and infrastructure of water kiosks, as well as the financial capacity of residents, are essential factors that influence the level of water consumption. For instance, families who own cars can fetch their water by car and usually collect water from kiosks that are accessible by road.

3. Priority for personal and domestic uses

35. From a human rights perspective, water for personal and human consumption must take priority over any other types of use, whether for industry, tourism or agriculture. According to the 2013 UN-Water country brief for Mongolia, as of 2009, the industrial sector was responsible for the majority of water withdrawals (38 per cent) together with irrigated crops (23 per cent) and livestock (21 per cent).[9] While mining and other industries may be a driver of economic growth, that may affect the priority of water allocation, which should be given to water used for essential personal and domestic uses for the whole population. The country's development goals should be implemented in a way that does not undermine water usage for human consumption and sanitation.

36. As Mongolia faces challenges related to the quantity and quality of water resources, both surface and groundwater, a future scenario of further pressure on water allocation and socioenvironmental conflicts over water is very likely. That will be exacerbated when the

[8] International Benchmarking Network for Water and Sanitation Utilities, country profile for Mongolia, available from http://database.ib-net.org/Country_Profile?ctry=92.

[9] Available from www.unwater.org/publications/un-water-country-briefs-mongolia/.

level of access to water increases in the *ger* areas. Water availability might increasingly fall behind the overall demand for water from all sectors. Prioritization of use thus becomes important and those managing water resources need to consider those factors. The Special Rapporteur recommends that Mongolia apply a human rights framework to guide policy and actions, particularly by giving priority to water for personal and domestic purposes.

B. Accessibility

37. Water and sanitation facilities and services must be physically accessible for everyone within or in the immediate vicinity of all spheres of their lives, particularly at home, but also in educational institutions, health facilities, the workplace, prisons and public places. In Mongolia, there exist different levels of services of water: piped network at home, truck-fed water kiosks, piped-fed kiosks and water kiosks supplied by well. In terms of sanitation, services are either individual solutions, namely pit latrines located outside dwellings, or connection to the central sewerage network.

38. The Water Supply and Sewerage Authority and the Housing and Communal Service Authority of Ulaanbaatar and their counterparts in local administrations, together with private providers, are responsible for the provision of services to households. The Ministry of Food, Agriculture and Light Industry oversees the provision of water in pastoral lands, particularly provision to the nomadic population, while the Ministry of Labour and Social Protection oversees access to water and sanitation for persons with disabilities.

1. Rural and urban areas

39. Nearly half the Mongolian population of 3 million is concentrated in urban cities, with 45 per cent of the population living in Ulaanbaatar and 9 per cent in Darkhan and Erdenet. The rest of the population is widely dispersed across the rural areas. The concentration of the population and the development around cities has shaped the disparity between the level of access to water and sanitation between cities and rural areas. In urban areas, residents enjoy relatively good access to improved water and sanitation, while access is lower among the poorest communities in rural areas and urban and peri-urban *ger* districts. In 2015, in their joint monitoring report, WHO and UNICEF reported that the urban population of Mongolia enjoyed near universal access to basic water services (94 per cent), but only half the rural population had access to that level of services (56 per cent). For sanitation, the disparity between urban and rural areas was also significant: in urban areas 66 per cent had access to basic sanitation services, while in rural areas only 41 per cent had access.[10]

40. The Special Rapporteur was able to witness this clear distinction during his stay in Ulaanbaatar and when he travelled to the Dundgovi and Umnugovi *aimags* (provinces). According to the Ministry of Environment and Tourism, of 334 *soums* (sub-provinces), only 20 have piped water supply for their central areas. The rest rely on collective or individual wells built by the Government, private entities or individuals. It is concerning that 34 *soums* still do not have a drinking water source that meets the national drinking water standard. The Special Rapporteur encourages the relevant ministries in the central Government, together with local governments, to continue to take measures to improve drinking water quality and to identify alternative safe water sources for those *soums* that do not have water sources that meet the drinking water standard.

41. The Special Rapporteur also noted the disparity between regions. The three main urban cities Ulaanbaatar (Tuv *aimag*), Darkhan (Darkhan-Uul *aimag*) and Erdenet (Orkhon *aimag*) are located in the northern region and all enjoy improved sanitation above the national level, according to the non-governmental organization Mongolia Water Forum Uskhelts. On the other hand, the provinces with the lowest level — Bayankhongor, Uvs, Khovd and Govi-Altay to name but some — are all located in the western region of Mongolia.[11] The Special Rapporteur recommends that the Government address the urban-

[10] *Progress on Drinking Water, Sanitation and Hygiene*.

[11] Figures from the 2010 population and housing census data.

rural and regional inequalities in access to drinking water and sanitation and give due priority to rural areas, which often lack the technical assistance and financial support needed to improve their services.

2. The *ger* areas and apartment areas

42. The stark division between the peri-urban *ger* areas and central apartment areas in Ulaanbaatar, with more than half the population living in the *ger* areas, was clearly visible to the Special Rapporteur. In terms of access to improved water, almost 45 per cent of Ulaanbaatar residents are connected to the water distribution system, whereas the residents of the *ger* areas rely on public kiosks, where water is supplied by water trucks or piped systems, or private kiosks supplied by wells. Currently, the Water Supply and Sewerage Authority of Ulaanbaatar operates 620 water kiosks, of which 50 per cent are connected to the central water distribution system and the rest are provisioned by mobile water truck. As almost 60 per cent of the population of Ulaanbaatar (approximately 200,000 households) live in the *ger* areas, the average ratio of 1 kiosk for more than 300 households is not sufficient. Furthermore, water kiosks entail high operating costs in the *ger* areas, which poses a challenge to building more water kiosks in them.

43. In terms of sanitation, some households in the *ger* areas have handwashing sinks with a small water container located above the sink, which usually holds two litres. Households collect wastewater in a bucket and discharge it to wastewater collection pits beside the pit latrines. Residents of the *ger* areas, especially children, generally take a bath at home by pouring water over themselves, although some take a shower in a bathhouse or use the shower in a relative's apartment.

44. The Special Rapporteur also observed those inequalities and concerns in other *aimags*. In Dundgovi and Umnugovi *aimags*, the distinction between the centres of *soums* and the *ger* areas is similar to that in Ulaanbaatar, but is smaller in size. For instance, in Dalanzadgad, all residents of apartments (about 4,000) have a connection to a piped network, whereas only 30 per cent of approximately 16,000 *ger* area residents have such access. The Special Rapporteur could clearly see that a different standard is applied to the *ger* areas, most obviously that they are not connected to a piped water and sanitation infrastructure.

45. That picture poses a challenging question as to the best way for the Government to address these inequalities. The Special Rapporteur recognizes that continuous efforts are being made to improve access to water and sanitation in the *ger* areas. With funds from the Asian Development Bank, the municipality of Ulaanbaatar is now in the process of establishing a separate communal system of water supply and sewerage in the *ger* areas. However, from the interaction the Special Rapporteur had with many stakeholders, including government officials, he observed that many take it for granted that water kiosks and individual (often unimproved) pit latrines are the expected level of access for the *ger* areas. In terms of the improvements that are being considered for those areas, the measures are limited to increasing the number of kiosks, extending piped systems to supply the kiosks or implementing smart kiosks. Of course, gradual improvements of the conditions in the *ger* areas are compatible with the principle of the progressive realization of human rights, but the Special Rapporteur would like to emphasize that improvements could be accelerated and upgraded in the current plans and efforts. The case of Dalanzadgad, mentioned above, where the centralized systems have been extended to the *ger* areas, shows that it is possible to treat the population of those areas in an equal manner to the population living in the central urban areas. The Special Rapporteur urges the Government to bridge the gap between the *ger* areas and the apartment areas by devising short- and long-term plans to provide gradual improvements in access to water and sanitation for the residents of *ger* areas.

3. Nomadic population

46. Although some efforts and measures have been implemented in the last decades, it was explained to the Special Rapporteur that the 9,000 wells available — 70 per cent of which are shallow wells — are largely insufficient to address the needs of the nomadic population. Concerns were also shared that water quality is sometimes an issue in the

shallow wells. Mongolia must provide an equivalent level of access to services to nomads and non-nomads alike and devise measures to accommodate their lifestyles. The Special Rapporteur suggests that better access to water for nomads that is sufficient for their personal consumption and for their livestock could be a key contributing factor in preventing mass migration to cities and rural centres.

47. Another related feature of the nomadic lifestyle of the population is the common existence of dormitories in schools. As the nomadic family moves from one place to another, in order to ensure continuous education, children from nomadic families live in dormitories during the nine-month school year. The Special Rapporteur visited several dormitories where students were able to access water, albeit cold, and toilets were in good shape. However, he also visited dormitories where students were using very unsafe external toilets without any access to water. For those students, dormitories are their main habitual residence and he therefore emphasizes that the Government needs to address water and sanitation conditions in dormitories in schools.

4. Persons with disabilities and older persons

48. Another aspect of inequality that the Special Rapporteur observed is in relation to persons with disabilities and older persons. According to the Ministry of Labour and Social Protection, 93,000 families have at least one member with a disability. Of those families, it is estimated that 52 per cent live in an apartment and the rest in the *ger* areas. Living in areas without connections to piped systems poses an additional layer of challenge for persons with disabilities and older persons.

49. During his two weeks in Mongolia, the only time that the Special Rapporteur saw a toilet built specifically for persons with disabilities and elderly persons in need of physical help was in the hospital of the Khuld *soum* of Dundgovi *aimag*. This was the only toilet with specific requirements for 50 residents (out of 2,400) who have a physical disability, of whom 6 were in need of wheelchairs. However, even that toilet, as acknowledged by the representative of the health centre, does not meet their requirements. In addition, collecting water from a water kiosk, carrying 20 litres of water and walking back and forth in poor road conditions in the *ger* areas pose challenges for persons with disabilities and elderly persons. In that regard, the Special Rapporteur urges the Government to comply with its human rights obligation under the Convention on the Rights of Persons with Disabilities, in particular article 28.[12]

5. Ethnic minority

50. In Mongolia, there is a minority population of Kazakh descendants living in the Bayan-Ulgii *aimag*, the westernmost *aimag* close to Kazakhstan. According to the 2010 census, the Kazakh minority represented around 4 per cent of the population. Owing to pastoral degradation in the western part of the country, the nomadic Kazakh population tends to migrate to the eastern part of the country, and it was explained to the Special Rapporteur that at times, the nomadic Kazakh minorities are subject to discrimination when accessing public wells.

C. Affordability

51. Water and the use of sanitation facilities and services must be affordable to individuals for all personal and domestic uses (A/HRC/30/39).

52. In Mongolia, each local administration proposes water tariffs and the Water Services Regulatory Commission approves them. The Ministry of Education and the Ministry of Health provide a budget to schools and hospitals, respectively, to maintain their facilities. As for social support, the Ministry of Labour and Social Protection identifies and surveys the population in need.

[12] Mongolia ratified the Convention in 2008 and acceded to it in 2009.

1. Water tariff and connection charges

53. The difference in levels of services leads to the difference in prices paid by individuals for water. In 2017, the Water Supply and Sewage Authority provided water at a price of tog 795 or $0.33 for 1,000 litres to households connected to the central network in Ulaanbaatar. In contrast, the water tariff is much higher for the residents of *ger* areas, who collect water from kiosks. The Water Services Regulatory Commission reports that residents of the *ger* areas in Ulaanbaatar pay at least tog 1,000 (approximately $0.50) per litre of water from kiosks. That is an amount far higher than the rates paid by households with piped connections.

54. Despite the high unitary prices, the rates are subsidized, as the cost of water and wastewater is approximately $0.56 per cubic metre.[13] Water from kiosks connected to the central network costs three times as much as the revenue it produces and four times as much for kiosks not connected to the central network. It costs tog 6,500 to distribute 1 cubic metre of water from water kiosks and results in a loss of over tog 1 billion annually in Ulaanbaatar.

55. With only 620 public kiosks available, residents of *ger* areas in Ulaanbaatar use private kiosks for drinking water, where charges are higher than the public kiosks. There are approximately 187 private boreholes in the *ger* area of Ulaanbaatar and water is charged at between tog 2 and 5 per litre, which is at least double the price of a public kiosk. The Special Rapporteur notes that there is no regulatory framework in place in Mongolia to regulate the service provisions of a private informal service provider.

56. Sanitation in the *ger* areas also implies other economic burdens for the residents, such as the need to dig new pit latrines when the latrine in use is full, for which they must hire and pay individual contractors. Additionally, without proper access to water at home, they use private shower facilities that charge tog 1,500 or $0.60 (for instance, in Mandalgovi in Dundgovi *aimag*) or tog 2,500 or approximately $1 (for instance, in Gachuurt district in Ulaanbaatar). At the time of the Special Rapporteur's visit, at both facilities the showers were clean but not in use. Considering that the average monthly income in Mongolia is approximately $220, access to private shower facilities can be unaffordable for a large family, leading to the infrequent use of showers. In addition to this economic burden, the Special Rapporteur emphasizes that residents of *ger* areas also incur non-monetary costs, such as the time that individuals take to collect water and go to the shower facilities.

57. In rural areas, the Ministry of Construction and Urban Development has implemented a project entitled "South-east Govi urban and border town development", funded by the Asian Development Bank, which aims to improve water and sanitation services for residents. In Dalanzadgad *soum*, the Special Rapporteur met a family who was happily enjoying a piped water connection inside their home, benefiting from the central water system infrastructure and a connection to a sewerage system. A few houses away from this family, the Special Rapporteur met a retired couple living on a pension who could not connect to the central network, as they were not able to afford the high connection fee, a one-time payment of tog 800,000 (approximately $340). The water connection charges increased from $50 in 2005 to $260 in 2017, while connection charges for sewerage decreased from $330 in 2012 to $260 in 2017.[14]

58. Even when households have a piped network available in their street, the responsibility and financial burden fall on the residents to put in place toilets, sinks and showers, as well as a heating system for hot water, not to mention adjusting the initial structure of the house to accommodate them. The Special Rapporteur encourages the Ministry of Labour and Social Protection to establish a specific programme to support those who are economically vulnerable in improving the facilities in their homes needed to access a piped network (for example, pipes, toilets, etc.). At the same time, the Special Rapporteur

[13] See International Benchmarking Network for Water and Sanitation Utilities, available from http://database.ib-net.org/Country_Profile?ctry=92.

[14] Ibid.

encourages the central Government and the local authorities to implement the means for facilitating the connection of those groups to piped systems through subsidy mechanisms.

59. In Mongolia, the water tariff is determined by the law on fees for the use of natural resources, the law on urban and rural water supply, sewerage and treatment, and the decree on ecological and economical evaluation of water. The governor of each *aimag* proposes tariffs and the Water Services Regulatory Commission approves the tariff proposal in consultation with the Consumer Committee. The Government has recently agreed on a new methodology to set water tariffs and is implementing pilot projects to test and validate the new model. In that respect, the Special Rapporteur provides a few elements below for the new methodology, in order for it to be compliant with the human rights obligation on water and sanitation.

60. Firstly, from a human rights perspective, it is important to reconcile the financial sustainability of the water and sanitation services with affordable access to those services for the population in vulnerable situations. Secondly, affordability does not mean only the price of the bill paid, but also includes other costs involved, such as non-monetary costs, particularly when addressing the financial burden of water and sanitation services for people living in the *ger* areas. Thirdly, to ensure the financial sustainability of providers, costs do not need to be recovered only from tariffs and different types of taxes, and transfer allocations should be considered. Additionally, in most countries, the unserved and the underserved populations tend to pay more for water and sanitation, and the shortcut to ensure affordable access is to provide an adequate level of services for all. The last consideration is that an efficient way to ensure affordable tariffs for the economically disadvantaged population is to charge non-residential users (industry, commerce, the service sector) higher tariffs, promoting cross-subsidies for residential users. Further, the reform of the water tariff scheme needs to take into account social tariffs and should also include water tariffs set by informal service providers that are currently operating outside government regulations. The Special Rapporteur recommends that these principles be considered as a guideline for any initiative to reform the water tariff system in Mongolia.

2. Disconnections in case of incapacity to pay

61. Affordability does not require that water and sanitation services be provided free of charge. However, when people cannot afford water and sanitation for reasons beyond their control, the State needs to find ways to ensure such access. Disconnection of water services owing to an inability to pay constitutes a violation of human rights. The Special Rapporteur would like to highlight the need to establish a clearer procedure on disconnections of water services.

62. In Mongolia, the law does not prohibit such disconnections. Disconnection cases are a topic addressed in the administrative courts, as they are considered an issue between an individual and a private entity contracted by the Government to provide water connections. However, the Special Rapporteur would like to reiterate the widely understood notion that the State, through the Government and its agents, is responsible for respecting, protecting and fulfilling human rights. Therefore, even if the State delegates the provision of water to a third party, the obligation still lies with the State and matters of disconnection should be considered as a human rights issue.

D. Quality and safety

63. The water used by households and individuals for domestic and personal uses must be of sufficient quality to protect their health.[15] In the case of Mongolia, where the water supply relies heavily on groundwater sources, untreated or only disinfected, pollution of water by any means, including by agriculture, industry and wastewater must, therefore, be prevented.

[15] See Committee on Economic, Social and Cultural Rights general comment No. 15.

64. The Ministry of Health is tasked with the surveillance of water quality and health issues related to the water supply. The Ministry of Environment and Tourism is responsible for the quality of surface water and groundwater, and the General Agency for Specialized Inspection is responsible for monitoring water quality and for ensuring the implementation of the applicable legal standards. At the local level, the local administration is responsible for controlling the quality of the drinking water that it provides to residents.

1. Water quality

65. During the visit, the Special Rapporteur heard a number of concerns expressed about the quality of drinking water. They referred to the impact of mining activities (including small-scale mining), overexploitation of aquifers, the hardness of the water and microbiological and chemical contamination, among others. The report of the General Agency for Specialized Inspection on the inspection of the quality and safety of drinking water in 2013 showed 22.8 per cent of samples with levels of bacteria above the allowed level and 5.2 per cent contaminated by the intestinal bacillus group.

66. Water sources are unevenly distributed within Mongolia, with abundant surface water resources located in northern Mongolia, but which are inaccessible to the drier central and southern parts of the country that lack water sources. As a result, Mongolia has a high degree of reliance on groundwater resources for drinking water and for domestic and personal usage. Approximately 90 per cent of water consumption is from groundwater. For instance, Ulaanbaatar relies entirely on groundwater for its water supply: only 1 per cent of its water supply is from surface water. That reliance on groundwater, coupled with the contamination of groundwater from mining and other industrial activities, poses a serious problem for the country.

67. As a large proportion of the population leads a nomadic lifestyle, migrating from one place to another, the nomadic population tend to use shallow wells or even surface water as their water sources. In the northern regions of Mongolia, small-scale artisanal gold mining is widely practised and often unregulated. Such unregulated gold-mining activities can chemically contaminate surface water and negatively impact on water quality for the nomadic population, as they are not aware, for example, of the colourless and odourless arsenic in the water. The Special Rapporteur met a nomadic family on the way from Ulaanbaatar to Umnugobi and he saw that the shallow well they use was vulnerable to contamination by animal faeces and soil pollution. He also witnessed the challenges they faced in using limited quantities of water for both humans and animals.

68. Residents of *ger* areas face higher health risks than those living in apartments, owing to water and sanitation issues. A survey of water quality in the *ger* areas, carried out in 2012–2013 found that 36 per cent of household storage containers were contaminated by *E. coli* in the winter, which rose to 56 per cent during the summer.[16] The level of domestic water contamination is very high, owing to the way in which water is fetched, stored and handled. The Special Rapporteur witnessed individuals using water containers that were not dedicated to the storage of drinking water.

69. As there are no sewers in the *ger* areas of Ulaanbaatar, and most people use unimproved pit latrines, the greywater flows in the streets and leads to soil pollution, which may lead to groundwater contamination. The Special Rapporteur notes that beyond an individual's access to a latrine or toilet, sanitation also has an important public health dimension. Adequate sanitation not only guarantees the individual access, but also protects the human rights of others, including their rights to life, health, water and a healthy environment, by ensuring that the environment in which they live is not contaminated with faeces (A/68/264).

70. Another relevant aspect related to the human right to water is the right to information, which includes information on water quality. The Special Rapporteur

[16] Sayed Mohammad Nazim Uddin and others, "Exposure to WASH-borne hazards: a scoping study on peri-urban ger areas in Ulaanbaatar, Mongolia" *Habitat International*, vol. 44 (October 2014).

encourages the Government to establish a systematic procedure to provide individuals with information on the quality of water they consume, using clear and accessible language.

2. Quality monitoring

71. In line with the water safety plan, the General Agency for Specialized Inspection conducts water quality examinations in coordination with the Ministry of Health. In doing so, it collects 1,000 samples per year. The Special Rapporteur emphasizes that a more substantial number of annual samples would help to provide a more comprehensive overview of the quality of drinking water in the country and would meet the international guidance on water quality control. Another issue is the lack of efficient resources to ensure timely reparation of situations where the quality of water does not meet the standards. The representatives of the Agency explained that when an alarming situation arises, the Deputy Prime Minister must be notified in order to set up the necessary measures to remedy the violation, which can result in a long process for proper and timely reparation of critical situations.

72. Concerning water quality checkpoints, the Special Rapporteur heard several concerns expressed about the quality of the water supplied by water trucks, as well as the impact on water quality of the types of water containers predominantly used by the population. To address this concern, the Special Rapporteur urges the Government, through the General Agency for Specialized Inspection, to monitor water in public facilities and to develop water quality monitoring at points of use.

73. In monitoring drinking water quality, it is critical that the most updated standard be used. The current norm, from 2005, requires an urgent update in line with the latest version of the WHO *Guidelines for Drinking-water Quality*, which define relevant limits for a wide range of potentially harmful substances to prevent "significant risk to health over a lifetime of consumption".[17] The Special Rapporteur encourages the General Agency for Specialized Inspection to accelerate the current momentum of the discussion on the revision of the current norm and to propose a standard compatible with the most updated international standards and scientific knowledge in this field.

74. Another concern in relation to water quality monitoring arises from the informal providers. Privately owned wells that are registered with the General Agency for Specialized Inspection are monitored; however, there are no mechanisms in place to ensure that the water quality from unregistered wells is adequate for human consumption.

3. Safety of sanitation services

75. Human rights require that sanitation facilities must be hygienically safe to use and easy to clean and maintain. They must effectively prevent human and animal, including insect, contact with human excreta to avert the spread of disease. Sanitation facilities must also be technically safe to use, which means that the superstructure is stable and the floor and hole to the pit are designed in a way that reduces the risk of accidents.

76. In 2015, the Government established norms and requirements for water, sanitation and hygiene in kindergartens, schools and dormitories. In implementation of this standard, around half the schools in Mongolia currently have indoor toilets. The conditions of the outdoor toilets that the Special Rapporteur saw seemed very inadequate and unsafe for usage, in contrast to the excellent conditions that he saw in recently built toilets in schools, for instance in the districts of Gachuurt and Nalaikh in Ulaanbaatar. The Special Rapporteur urges the Government to address this disparity between schools, so that all Mongolian students enjoy the same conditions.

[17] World Health Organization, *Guidelines for Drinking-water Quality*, 4th ed. (Geneva, World Health Organization, 2011).

E. Acceptability, privacy and dignity

77. Sanitation facilities and services must be culturally acceptable (see A/HRC/12/24, para. 80), taking into account the needs of persons with disabilities, elderly persons and other populations in vulnerable situations in the design and positioning of sanitation facilities and conditions for their use.

78. Sanitation facilities that do not allow women and girls to change menstrual materials and to wash put women and girls at a disadvantage based on their gender. Toilets for women and girls must accommodate menstruation hygiene management needs, particularly with respect to privacy. In Mongolia, the Special Rapporteur observed that sanitation for girls who are starting their menstruation is problematic. The minimum standard study conducted by the Government in 2015 found that girls during their menstruation cycle had a tendency not to attend school, as they did not want to use the unimproved toilets. Another concern related to menstrual hygiene is that access to water and showers in dormitories and the provision of pads for girls of menstruation age are not yet prioritized. The Special Rapporteur recommends that the Ministry of Education put a high priority on programmes for menstrual hygiene management in schools and dormitories.

V. International development cooperation

79. Since 1998, several international development funders, both multilateral and bilateral, have been working to improve access to water and sanitation services in Mongolia. While improvements have been made in the last 20 years, the situation of water and sanitation in Mongolia is in dire need of further support and government entities still face challenges in repaying the loans from the projects. For instance, the Water Supply and Sewerage Authority and the Housing and Communal Service Authority of Ulaanbaatar are currently in debt recovery from the World Bank loan of 1998.

80. Against the backdrop of the current challenges faced by Mongolia in providing access to water and sanitation for all, the Special Rapporteur emphasizes that giving priority to the water and sanitation sector in the international development cooperation agenda is essential. Priority must be given, in order to address the disparity in access to water and sanitation services and other technical challenges that arise owing to the continental climate of Mongolia. In that connection, he suggests that such circumstances be considered as an exceptional element that would argue for more grants as opposed to loans, even if Mongolia is placed in the middle-income country category. Furthermore, he calls for a joint effort from international development funders, international and national implementing entities and the Government to improve access to water and sanitation in the *ger* areas. In doing so, he recalls that all actors in development cooperation should implement their human rights obligations and responsibilities throughout the cycle of development cooperation (A/72/127).

VI. Conclusions and recommendations

81. **During his two-week visit, the Special Rapporteur examined access to water and sanitation services for Mongolians living in urban and rural areas, including the nomadic population. In particular, he observed various layers of inequalities in access to drinking water and sanitation services. From a human rights perspective, inequalities in access to those services are a matter of great concern. In the present report, the Special Rapporteur presents these concerns in line with the normative content of the human rights to safe drinking water and sanitation, namely, availability, accessibility, affordability, quality and safety, acceptability, dignity and privacy. He reiterates that disparities in access to water and sanitation require legal, policy, institutional and technical solutions from a human rights perspective and that Mongolia should incorporate human rights into its continued efforts to improve water and sanitation services for all.**

82. **The Special Rapporteur would like to emphasize that the adoption of a comprehensive approach to implementing the human rights to water and sanitation will guide and aid Mongolia in reducing the inequalities in access and progressively realizing universal access to water and sanitation services. In that connection, the Special Rapporteur recommends that the Government:**

(a) **Adopt legal provisions that recognize the human rights to water and sanitation at the national level;**

(b) **Incorporate the normative content and principles of the human rights to water and sanitation for policies and programmes on water, sanitation and hygiene;**

(c) **Implement measures to address the institutional arrangements in the water and sanitation sector, which currently limit the implementation of the human rights to water and sanitation, inter alia:**

(i) **Conduct a comprehensive assessment of the institutional arrangements in the water and sanitation sector, with a view to establishing a unified national policy and a governmental body tasked to coordinate the water and sanitation policy of the central Government, together with focal points in each ministry. That coordination should be approached through the human rights framework and should ensure that the responsible bodies are held accountable;**

(ii) **Improve dialogue and exchange of information between all levels of government in relation to access to water and sanitation, in accordance with a clearly established human rights framework;**

(iii) **Establish clearly defined roles and responsibilities of governmental institutions related to water and sanitation in order to address the scattered responsibilities that prevent individuals from effectively holding the Government accountable for its human rights obligations;**

(iv) **Establish a designated governmental agency with a clear mandate to plan and implement interventions in the area of sanitation, with a particular focus on the *ger* areas;**

(v) **Establish accountability mechanisms to monitor the compliance of the relevant governmental institutions and informal service providers with established standards and impose sanctions, and ensure that corrective and remedial action is taken;**

(d) **Align the Sustainable Development Vision 2030 of Mongolia on water and sanitation, in its aspirations and its language, with Sustainable Development Goals 6.1 and 6.2 and implement the Sustainable Development Vision 2030 through a human rights lens;**

(e) **Address disparities between schools, so that all Mongolian students enjoy the same conditions and in particular, address water and sanitation conditions in dormitories in schools. Measures should aim to ensure continuous service of sanitation facilities in education facilities, by addressing the financial support needed to maintain sanitation facilities in schools. High priority should be given to programmes for menstrual hygiene management in schools and dormitories, with a focus on access to adequate facilities, sanitation, infrastructure and supplies to enable girls to change and dispose of menstrual materials;**

(f) **Address and bridge the gap between the *ger* and apartment areas in terms of the level of water and sanitation services, continuity of services and water tariffs. In doing so, devise short- and long-term measures to provide a gradual improvement in access to water and sanitation, with the aim of ensuring continuous services and connection to piped networks:**

(i) **During the initial phases, envisage and plan to increase the number of water kiosks and improve the quality of pit latrines;**

(ii) **During the subsequent phases, with the expansion of piped networks to the *ger* areas, establish a specific programme or *subsidy mechanism to support***

those who are economically vulnerable in improving the facilities in their homes that are needed to access a piped network and to pay fees for connecting to piped networks;

(g) Address urban-rural inequalities in access to water and sanitation services and give due priority to rural areas, with technical assistance and financial support to improve those services;

(h) Apply a human rights framework to water resources management, particularly by giving priority to water for personal and domestic use over other uses related to economic activities;

(i) On drinking water quality:

(i) Increase the number of annual samples in order to have a more comprehensive overview of drinking water quality and meet the international guidance on water quality control;

(ii) Continue to take measures to improve drinking water quality and to identify alternative safe water sources for *soums* with drinking water services that do not meet the drinking water standard;

(iii) Take advantage of the current revision of national standards and adopt standards compatible with the most updated international guidelines and scientific knowledge in the field;

(iv) Establish a systematic procedure to provide individuals with information on the quality of the water they consume, using clear and accessible language;

(j) Establish a regulatory framework to regulate the provision of services, including those under the responsibility of local governments and of private informal service providers;

(k) Establish a clearer procedure on disconnections of water services;

(l) Incorporate human rights standards and principles in the current reform initiative of the water tariff system.

83. The Special Rapporteur recommends that international development funders:

(a) Prioritize development cooperation activities in the Mongolian water and sanitation sector, particularly in the *ger* areas, increasing the proportion of grants as opposed to loans in their funding;

(b) Put in place guarantees and safeguards to ensure that their development cooperation will fully incorporate human rights, particularly by implementing the human rights principles and standards at all stages of the cycle of development cooperation projects.